



**CORNELL UNIVERSITY LAW LIBRARY**

**The Moak Collection**

**PURCHASED FOR**

**The School of Law of Cornell University**

**And Presented February 14, 1893**

**IN MEMORY OF**

**JUDGE DOUGLASS BOARDMAN**

FIRST DEAN OF THE SCHOOL

**By his Wife and Daughter**

**A. M. BOARDMAN and ELLEN D. WILLIAMS**

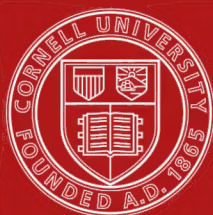
Cornell University Library  
**KD 1480.G58**

**A digest of the principles of the law of**



**3 1924 021 859 289**

law



## Cornell University Library

The original of this book is in  
the Cornell University Library.

There are no known copyright restrictions in  
the United States on the use of the text.




A DIGEST  
OF  
THE PRINCIPLES OF  
THE LAW OF TRUSTS  
AND TRUSTEES.



A DIGEST  
OF  
THE PRINCIPLES OF  
THE LAW OF TRUSTS  
AND TRUSTEES.

BY

HENRY GODEFROI,

  
OF LINCOLN'S INN, ESQ., BARRISTER-AT-LAW.

JOINT AUTHOR OF "GODEFROI AND SHORTT ON THE LAW OF RAILWAY COMPANIES."

LONDON :  
STEVENS & SONS, 119, CHANCERY LANE,  
Law Publishers and Booksellers.

1879.

M-935-8

LONDON :

BRADBURY, AGNEW, & CO., PRINTERS, WHITEFRIARS.

TO

THE RIGHT HONOURABLE

SIR GEORGE JESSEL, KNIGHT, P.C.

MASTER OF THE ROLLS,

*This Work is (by permission) Dedicated*

WITH SENTIMENTS OF GREAT RESPECT BY

THE AUTHOR.

•





## PREFACE.

---

It is intended in this work to place before the Profession, in as concise a form as the nature of the subject permits, the various principles which guide Courts of Equity in dealing with what is probably the most important branch of their jurisprudence. In adopting the title I have chosen, I am aware that, scientifically speaking, the book is not a digest in the sense in which that term is used by jurists; but it is hoped that by the process of condensation, and by the elimination of matters of comment and criticism, the term may not be found inappropriate. A perfect digest in the sense referred to, on so extensive a subject, would be a work embracing so large an area, and involving matters of detail so complex and diverse in character, that the object of this book, as stated above, would in a great measure be defeated by seeking to supply such a work.

In collecting the materials required, I have been careful to examine and collate the most important decisions to be found in the Reports on the several parts of the subject, and to record what I conceive to be the short results of the authorities, referring, however, only to those which in my

opinion best illustrate those results. I am, of course, much indebted to the numerous and excellent text-books which deal with the subject of Trusts ; but I have used them rather as guides to the Reports than as embodying the matter with which I have dealt, and I have in every case formed, and I trust accurately formed, my own conclusions throughout this work.

By the aid of a very full Index I hope to have made the book easy of reference to the practitioner.

I am indebted to Mr. C. J. Cooper, of Lincoln's Inn, for the references in the Table of Cases to the contemporaneous serial Reports.

H. G.

4, NEW SQUARE, LINCOLN'S INN,  
*December, 1878.*

# TABLE OF CONTENTS.

	PAGE
PREFACE . . . . .	vii
TABLE OF CONTENTS . . . . .	ix
TABLE OF CASES . . . . .	xvii

## CHAPTER I.

OF VESTING THE LEGAL ESTATE IN THE TRUSTEE . . . . .	1—9
I. By will . . . . .	1
When trustees do not take the legal estate . . . . .	2
When trustees take the legal estate . . . . .	3
Quantum of estate taken by the trustee . . . . .	4
When trustees take the fee . . . . .	5
When trustees take less than the fee . . . . .	7
II. By deed . . . . .	8
When trustees take the fee . . . . .	9

## CHAPTER II.

OF DISCLAIMER AND ACCEPTANCE OF THE TRUST . . . . .	10—14
Mode of disclaimer . . . . .	10
Effect of disclaimer . . . . .	11
Acceptance . . . . .	12

## CHAPTER III.

OF THE DUTY OF TRUSTEES TO ACT JOINTLY . . . . .	15
--	----

## CHAPTER IV.

	PAGE
OF THE DUTY OF TRUSTEES TO ACT PERSONALLY . . .	17

## CHAPTER V.

OF THE DEVISE OF THE LEGAL ESTATE IN TRUST AND MORT- GAGE ESTATES . . . . .	21—24
Where trust estates do not pass . . . . .	21
Where trust estates pass . . . . .	22
Execution of the trust by a devisee of trust estates . .	23

## CHAPTER VI.

OF THE STATUTE OF FRAUDS AS IT AFFECTS TRUSTS . .	25
---	----

## CHAPTER VII.

OF VOLUNTARY TRUSTS BY TRANSFER AND DECLARATION	27—36
---	-------

## CHAPTER VIII.

OF IRREVOCABLE AND REVOCABLE TRUSTS FOR CREDITORS	37—42
---	-------

## CHAPTER IX.

OF EXECUTORY TRUSTS . . . . .	43—51
In marriage articles . . . . .	44—47
In wills . . . . .	47—49
Frame of settlement directed . . . . .	49—51
Trusts of chattels by reference to limitations of real estate . . . . .	51

## CHAPTER X.

OF PRECATORY TRUSTS . . . . .	52—57
-------------------------------	-------

## CHAPTER XI.

	PAGE
OF RESULTING TRUSTS . . . . .	58—71
From imperfect disposition . . . . .	58—60
From want of consideration . . . . .	60
On purchases in the name of a child or wife . . . . .	61—66
On purchases in the name of strangers . . . . .	66—69
On joint purchases . . . . .	69—71

## CHAPTER XII.

OF CONSTRUCTIVE TRUSTS . . . . .	72—78
Renewal of leases by trustees and others . . . . .	73
by trustees and executors . . . . .	73, 74
by tenant for life . . . . .	75
by mortgagees . . . . .	75
by joint lessees . . . . .	76
by partners . . . . .	76
generally . . . . .	77, 78

## CHAPTER XIII.

OF SECRET TRUSTS . . . . .	79—82
Secret charitable trusts . . . . .	82

## CHAPTER XIV.

OF ILLEGAL TRUSTS . . . . .	83—86
-----------------------------	-------

## CHAPTER XV.

OF GETTING IN THE TRUST ESTATE . . . . .	87—97
wasting securities . . . . .	91
reversions . . . . .	95
Adjustment of rights in residue between life-tenant and remainderman . . . . .	95—97

## CHAPTER XVI.

OF THE SAFETY OF TRUST PROPERTY . . . . .	98—100
---	--------

## CHAPTER XVII.

	PAGE
OF THE GENERAL DISCRETION AND POWERS OF TRUSTEES	101—110
Execution of powers by the Court . . . .	103
Power to consent to marriage . . . .	104
Power to build, repair, cut timber, &c. . . .	105
Petitions for the opinion of the Court . . . .	108

## CHAPTER XVIII.

OF SALES BY TRUSTEES . . . .	111—130
Receipts of trustees . . . .	124

## CHAPTER XIX.

OF TRUSTS FOR, AND POWER OF, INVESTMENT . . .	131—147
Indefinite or imperfect trust to invest . . . .	131
Exchequer Bills . . . .	132
Statutory powers of investment . . . .	132
personal security . . . .	136
stocks and shares . . . .	139
mortgages . . . .	140
purchase of land . . . .	144

## CHAPTER XX.

OF TRUSTS AND POWERS RELATING TO RENEWABLE LEASE-	
HOLDS . . . .	148
Apportionment of renewal fines and expenses . . .	150

## CHAPTER XXI.

OF THE RULE AGAINST PERPETUITIES AS APPLICABLE TO	
TRUSTS—TRUSTS FOR ACCUMULATION—THELLUSSON	
ACT . . . .	152—156



# CHAPTER XXII.

	PAGE
OF TRUSTS TO SECURE PORTIONS . . . . .	157—170
Vesting of portions . . . . .	160
Payment of portions . . . . .	162
Raising of portions . . . . .	164
Amount raisable . . . . .	165
Interest on, and maintenance out of, portions . . . . .	166
Sinking of portions. . . . .	167
Merger of portions . . . . .	168
Satisfaction . . . . .	169

# CHAPTER XXIII.

OF TRUSTS FOR, AND POWERS OF, MAINTENANCE AND AD-	
VANCEMENT . . . . .	171—181
I. Maintenance . . . . .	171—178
II. Advancement . . . . .	178—181

# CHAPTER XXIV.

OF PURCHASES OF THE TRUST ESTATE BY THE TRUSTEE	182—195
Leases to trustees, &c. . . . .	183
Mortgagees buying the equity of redemption . . . . .	186
Agents buying on their own behalf . . . . .	187
Solicitors buying from clients . . . . .	189
Counsel buying property as to which they have advised . . . . .	191
Recovery of the trust estate bought by trustees, &c. . . . .	191
Confirmation of, and acquiescence in the purchase . . . . .	193

# CHAPTER XXV.

OF THE RULE THAT TRUSTEES MAY NOT PROFIT BY THE	
TRUST—ALLOWANCES TO TRUSTEES . . . . .	196—202

# CHAPTER XXVI.

OF THE RETIREMENT AND REMOVAL OF TRUSTEES AND AP-	
POINTMENT OF NEW TRUSTEES . . . . .	203—217

## CHAPTER XXVII.

	PAGE
OF THE EFFECT OF THE TRUSTEE'S BANKRUPTCY .	218—220

## CHAPTER XXVIII.

OF THE TENANT FOR LIFE'S RIGHT TO POSSESSION .	221—225
--	---------

## CHAPTER XXIX.

OF THE CONVEYANCE BY TRUSTEES BY ORDER OF CESTUIS QUE TRUST . . . . .	223—225
--	---------

## CHAPTER XXX.

OF THE CUSTODY OF TITLE-DEEDS . . . . .	226
---	-----

## CHAPTER XXXI.

OF THE DUTY OF TRUSTEES TO KEEP ACCOUNTS AND FURNISH INFORMATION . . . . .	228
---	-----

## CHAPTER XXXII.

OF PAYMENT BY TRUSTEES TO CESTUIS QUE TRUST--Re-	
LEASES . . . . .	230—241
Releases . . . . .	236
Indemnity to trustees . . . . .	237
Liability for co-trustees . . . . .	238
Voluntary and <i>de facto</i> trustees . . . . .	240

## CHAPTER XXXIII.

OF THE RIGHTS OF THE CROWN WITH REFERENCE TO TRUSTS— TRUSTS OF FOREIGN PROPERTY . . . . .	242—246
--	---------

## CHAPTER XXXIV.

	PAGE
OF THE TRUST FOR A MARRIED WOMAN'S SEPARATE USE	247—266
I. The separate use . . . . .	247
Words which constitute a separate use . . . . .	253
Power of disposition . . . . .	257
Liability for general engagements . . . . .	259
Proceedings with regard to the separate estate . . . . .	263
II. Restraint on anticipation . . . . .	266

## CHAPTER XXXV.

OF DOWER AND CURTESY IN EQUITABLE ESTATES . . . . .	269
Dower . . . . .	269
Curtesy . . . . .	270

## CHAPTER XXXVI.

OF Receivers . . . . .	272
Payment into Court by order . . . . .	274
Attachment for non-payment . . . . .	276
Compelling trustees to assert legal rights . . . . .	278
Injunctions against trustees . . . . .	279
<i>Ne exeat</i> against trustees . . . . .	280
Criminal liability of trustees . . . . .	281
Striking solicitor-trustee off the Rolls . . . . .	282

## CHAPTER XXXVII.

OF CHARGING TRUSTEES WITH INTEREST FOR BREACH OF TRUST . . . . .	283—288
Compound interest or rests . . . . .	287

## CHAPTER XXXVIII.

OF NOTICE TO TRUSTEES ON ASSIGNMENTS OF EQUITABLE INTERESTS . . . . .	288	292
---	-----	-----

## CHAPTER XXXIX.

PAGE

OF FOLLOWING THE TRUST ESTATE INTO THE HANDS OF PUR-	
CHASERS AND OTHERS . . . . .	293—305
Purchase for value without notice . . . . .	293—299
Wrongful conversion of the trust estate—tracing trust	
funds . . . . .	299—304
Following trust money into land . . . . .	304, 305

## CHAPTER XL.

OF THE ENFORCEMENT OF TRUSTS AS AFFECTED BY STATUTES	
OF LIMITATION . . . . .	306—323
Bar of equitable claims . . . . .	312
Delay and acquiescence—stale demands . . . . .	316
fraud . . . . .	320
Account of rents and profits . . . . .	323

## CHAPTER XLI.

OF SPECIFIC RELIEF FOR BREACH OF TRUST—JOINT AND	
SEVERAL LIABILITY—CONCURRENCE AND ACQUIESCENCE	
OF CESTUIS QUE TRUST . . . . .	324—337

---

INDEX . . . . .	339
-----------------	-----

## TABLE OF CASES.

	PAGE
ABERDEEN RAILWAY Co. <i>v.</i> Blakie, 1 Macq. 461 . . . . .	182
— Town Council <i>v.</i> Aberdeen University, L. R. 2 App. Ca. 544 . . . . .	72, 74, 183, 196, 296
Acherley <i>v.</i> Acherley, 7 B. P. C. 273 . . . . .	25
Acheson <i>v.</i> Fair, 2 C. & L. 208 . . . . .	74
Ackland <i>v.</i> Lutly, 9 A. & E. 879, 1 Per. & D. 636 ; 8 L. J. Q. B. 164 . . . . .	6
— <i>v.</i> Pring, 2 M. & Gr. 937, 3 Scott, N. R. 297 ; 10 L. J. C. P. 231 . . . . .	6
Ackroyd <i>v.</i> Ackroyd, 18 Eq. 313 . . . . .	92
— <i>v.</i> Smithson, 1 W. & T. L. C. 949 . . . . .	60
Acland <i>v.</i> Gaisford, 2 Mad. 32 . . . . .	73
Acton <i>v.</i> Woodgate, 2 M. & K. 492 . . . . .	41
Adair <i>v.</i> Shaw, 1 Sch. & L. 243 . . . . .	294, 330
Adams <i>v.</i> Adams, 6 Q. B. 860 ; 14 L. J. Q. B. 171 . . . . .	8
— <i>v.</i> Beck, 25 Bea. 648 . . . . .	158
— <i>v.</i> Broke, 1 Y. & C. C. C. 627 . . . . .	119
— <i>v.</i> Claxton, 4 Ves. 226 . . . . .	20
— <i>v.</i> Clifton, 1 Russ. 297 . . . . .	17
— <i>v.</i> Sworder, 2 D. J. & S. 44 ; 33 L. J. Ch. 318 ; 10 Jur. N. S. 140 . . . . .	188
— <i>v.</i> Taunton, 5 Mad. 435 . . . . .	10, 12
Adamson <i>v.</i> Armitage, G. Coop. 283 ; 19 Ves. 416 . . . . .	254
— Ex parte, 8 Ch. D. 807 . . . . .	220
Adderley <i>v.</i> Clavering, 2 B. C. C. 659 ; 2 Cox 192 . . . . .	78, 148
Addison <i>v.</i> Cox, 8 Ch. 79 ; 42 L. J. Ch. 291 ; 27 L. T. N. S. 45 ; 21 W. R. 180 . . . . .	290
Adey <i>v.</i> Arnold, 2 D. M. & G. 432 . . . . .	333
Adlington <i>v.</i> Cann, 3 Atk. 147 . . . . .	26, 81, 82, 243
Adye <i>v.</i> Feuilloteau, 3 Sw. 84 n. ; 1 Cox 24 . . . . .	136
Agra Bank, Ex parte, 3 Ch. 555 ; 16 W. R. 79 . . . . .	290, 291

	PAGE
<i>Aguilar v. Aguilar</i> , 5 Mad. 414 . . . . .	263
<i>Ainslie v. Harcourt</i> , 28 Bea. 313 ; 30 L. J. Ch. 686 . . . . .	151
<i>Alcock v. Sloper</i> , 2 M. & K. 699 . . . . .	92
<i>Aldridge v. Westbrook</i> , 4 Bea. 212 . . . . .	206
<i>Alexander v. Alexander</i> , Tudor R. P. C. 330 . . . . .	20, 157
— <i>v. Mills</i> , 6 Ch. 124 ; 40 L. J. Ch. 73 ; 24 L. T. N. S. 206 ; 19 W. R. 310 . . . . .	119, 214
— <i>v. Wellington</i> , 2 R. & My. 35 . . . . .	242
— <i>v. Young</i> , 6 Ha. 393 . . . . .	267
<i>Alison, Re</i> , 8 Ch. D. 1 ; 47 L. J. Ch. 755 ; 38 L. T. N. S. 304 . . . . .	175
<i>Allan v. Backhouse</i> , 2 V. & B. 65 . . . . .	151, 164
<i>Allen v. Bewsey</i> , 7 Ch. D. 453, 458 . . . . .	1
— <i>v. Coster</i> , 1 Bea. 202 . . . . .	175
— <i>v. Knight</i> , 5 Hare, 272 . . . . .	297
— <i>Re</i> , 8 Ch. 417 n. . . . .	176
— <i>v. Walker</i> , L. R. 5 Ex. 187 . . . . .	265
<i>Allhusen v. Whittell</i> , 4 Eq. 295 ; 36 L. J. Ch. 929 ; 16 L. T. N. S. 695 . . . . .	95, 96, 97, 115
<i>Alven v. Bond</i> , Fl. & K. 196 . . . . .	188
<i>Amand v. Bradbourne</i> , 2 Ch. Ca. 138 . . . . .	202
<i>Ambrose v. Ambrose</i> , 1 P. W. 321 . . . . .	67
<i>Ames v. Parkinson</i> , 7 Bea. 379 . . . . .	90
<i>Anderson v. Anderson</i> , 2 M. & K. 427 . . . . .	265
<i>Andrew v. Wrigley</i> , 4 B. C. C. 125 . . . . .	296, 313
<i>Andrews v. Partington</i> , 3 B. C. C. 60 . . . . .	101
<i>Angell v. Dawson</i> , 3 Y. & C. 308 . . . . .	101, 132
<i>Angelo, Re</i> , 3 D. G. & Sm. 278 . . . . .	210
<i>Angerstein, Ex parte</i> , 9 Ch. 479 ; 43 L. J. Bank. 131 ; 30 L. T. N. S. 446 ; 22 W. R. 581 . . . . .	230
— <i>v. Martin</i> , T. & R. 232 . . . . .	95
<i>Angier v. Stannard</i> , 3 M. & K. 566 . . . . .	122, 206, 223, 232
<i>Angus v. Angus, West</i> , 23 . . . . .	244
<i>Annesley v. Ashurst</i> , 3 P. W. 282 . . . . .	113
<i>Anon.</i> 31 Bea. 310 . . . . .	237
— <i>Carth.</i> 15 . . . . .	69
— 4 T. Eq. R. 700 . . . . .	204
— 6 Madd. 10 . . . . .	280
— 12 Mod. 560 . . . . .	18, 238
— 2 Ves. 182 . . . . .	251
— 3 Ves. 515 . . . . .	202
— 12 Ves. 4 . . . . .	273
<i>Antrobus v. Smith</i> , 12 Ves. 39 . . . . .	29, 34
<i>Appleton v. Rowley</i> , 8 Eq. 139 ; 38 L. J. Ch. 689 ; 20 L. T. N. S. 600 . . . . .	271



	PAGE
Apsey, Re, 3 B. C. C. 265 . . . . .	325
Arbuckle, Re, 14 W. R. 535 . . . . .	172
Archbold v. Scully, 9 H. L. C. 360 . . . . .	74, 313
Archer v. Rorke, 7 I. Eq. R. 478 . . . . .	247
Ardill v. Savage, 1 Ir. Eq. R. 79 . . . . .	207
Arglasse v. Muschamp, 1 Vern. 75 . . . . .	244
Armitage v. Coates, 35 Bea. 1 . . . . .	267
Armory v. Delamirie, 1 Strange, 505 . . . . .	100
Armstrong v. Armstrong, 7 Eq. 518 ; 38 L. J. Ch. 463 ; 20 L. T. N. S. 776 . . . . .	57
— Re, 5 W. R. 448 . . . . .	208
Arnold v. Garner, 2 Ph. 231 . . . . .	197
— v. Woodhams, 16 Eq. 29 ; 42 L. J. Ch. 578 ; 28 L. T. N. S. 351 ; 21 W. R. 694 . . . . .	266
Arrowsmith, Re, 4 Jur. N. S. 1123 ; 6 W. R. 642 ; 31 L. T. 243 . . . . .	22
Arthur v. Clarkson, 35 Bea. 458 . . . . .	34
Ashby v. Blackwell, 2 Ed. 299 . . . . .	235
Ashley, Re, 1 R. & M. 371 . . . . .	177
Ashton v. McDougall, 5 Bea. 56 . . . . .	253
— v. Wood, 3 Sm. & G. 436 ; 3 Jur. N. S. 1164 ; 30 L. T. 85 . . . . .	23
Ashworth v. Outram, 5 Ch. D. 923 ; 46 L. J. Ch. 687 ; 37 L. T. N. S. 85 ; 25 W. R. 896 . . . . .	247, 249, 250
Askew v. Rooth, 17 Eq. 426 ; 43 L. J. Ch. 368 . . . . .	251, 253
Astbury v. Beasley, W. N. 1869, 96 . . . . .	98
Aston v. Wood, 6 Eq. 419 . . . . .	59
Atcherley v. Vernon, 10 Mad. 518 . . . . .	256
Atkins v. Delmege, 12 Ir. Eq. R. 1 . . . . .	191
Attorney-General v. Alford, 4 D. M. & G. 843 ; 3 W. R. 200 ; 19 Jur. 361 ; 24 L. T. 265 . . . . .	283, 285
— v. Brickdale, 8 Bea. 223 . . . . .	16
— v. Chapman, 3 Bea. 255 . . . . .	216
— v. Christ's Hospital, 3 M. & K. 344 . . . . .	311
— v. Clack, 1 Bea. 467 . . . . .	205
— v. Clarendon, 17 Ves. 500 . . . . .	185
— v. Coventry, Mayor of, Seton, 500 . . . . .	215
— v. Cuming, 2 Y. & C. C. C. 150 . . . . .	216
— v. Dixie, 13 Ves. 519 . . . . .	185
— v. Dudley, G. Coop. 146 . . . . .	192, 193, 195
— v. Flint, 4 Ha. 147 . . . . .	307
— v. Floyer, 2 Vern. 748 . . . . .	213
— v. Geary, 3 Mer. 513 . . . . .	107
— v. Gore, Barn. 145 . . . . .	221
— v. Köhler, 9 H. L. C. 655 ; 8 Jur. N. S. 467 . . . . .	244, 283
— v. Leicester, Corp. of, 7 Bea. 176 . . . . .	19

	PAGE
Attorney-General <i>v.</i> Lepine, 2 Swans. 181 . . . . .	246
— <i>v.</i> Liverpool, Mayor of, 1 M. & Cr. 171 . . . . .	279
— <i>v.</i> Milner, 3 Atk. 115. . . . .	168
— <i>v.</i> Munby, 1 Mer. 327 . . . . .	82
— <i>v.</i> Parnter, 3 B. C. C. 441 . . . . .	249
— <i>v.</i> Pearson, 3 Mer. 408 . . . . .	83, 207
— <i>v.</i> Poulden, 3 Ha. 555 . . . . .	154
— <i>v.</i> Sands, Nels. 133. . . . .	152
— <i>v.</i> Scott, 1 Ves. Sen. 413 . . . . .	20
— <i>v.</i> Sturge, 19 Bea. 597 ; 23 L. J. Ch. 495 . . . . .	246
— <i>v.</i> Vigor, 8 Ves. 276 . . . . .	21
— <i>v.</i> Ward, 6 Ha. 477 . . . . .	216
— <i>v.</i> Wilson, Cr. & Ph. 1 . . . . .	330
— <i>v.</i> Wyville, 28 Bea. 464 . . . . .	16
Austen <i>v.</i> Taylor, 1 Ed. 361 . . . . .	44, 48
Auster <i>v.</i> Powell, 1 D. J. & Sm. 99 ; 9 Jur. N. S. 421 ; 8 L. T. N. S. 73 . . . . .	180
Austin <i>v.</i> Austin, 4 Ch. D. 223 ; 46 L. J. Ch. 92 ; 36 L. T. N. S. 96 ; 25 W. R. 346 . . . . .	248, 256
Aveline <i>v.</i> Melhuish, 2 D. J. & Sm. 292 ; 10 Jur. N. S. 788 ; 12 W. R. 1020 . . . . .	241, 336
Aveling <i>v.</i> Knipe, 19 Ves. 445 . . . . .	68, 69
Avery <i>v.</i> Griffin, 6 Eq. 606 ; 18 L. T. N. S. 849 . . . . .	114, 212
Ayerst <i>v.</i> Jenkins, 16 Eq. 275 ; 42 L. J. Ch. 690 ; 29 L. T. N. S. 126 ; 21 W. R. 878 . . . . .	68
Aylett <i>v.</i> Ashton, 1 M. & Cr. 105 . . . . .	263
Ayliffe <i>v.</i> Murray, 2 Atk. 58 . . . . .	201
Aylmer <i>v.</i> Aylmer, 1 Moll. 87 . . . . .	284
BABER, Re, 10 Eq. 554 ; 40 L. J. Ch. 144 ; 18 W. R. 1131 . . . . .	37, 38
Back <i>v.</i> Andrew, 2 Vern. 120 . . . . .	63, 66
Backhouse <i>v.</i> Middleton, 1 Ch. Ca. 173 . . . . .	164
Bacon <i>v.</i> Bacon, 5 Ves. 331 . . . . .	19
— <i>v.</i> Clark, 3 M. & Cr. 294 . . . . .	99
— <i>v.</i> —, 1 P. W. 478 . . . . .	162
— <i>v.</i> Proctor, T. & R. 31 . . . . .	155
Badcock, Ex parte, M. & Mac. 231 . . . . .	188
Bagenal <i>v.</i> Bagenal, 6 B. P. C. 81 . . . . .	166
Baggett <i>v.</i> Meux, 1 Ph. 627 . . . . .	266
Bagot <i>v.</i> Bagot, 10 L. J. Ch. 123 . . . . .	273
Bagshaw <i>v.</i> Spencer, 1 Ves. Sen. 142 . . . . .	5, 44
Bailey <i>v.</i> Ekins, 7 Ves. 232 . . . . .	126
— <i>v.</i> Gould, 4 Y. & C. 221 . . . . .	100

	PAGE
Baillie v. Baillie, 5 Eq. 175 . . . . .	245
— v. McKewan, 35 Bea. 177 . . . . .	297, 298
Bain v. Sadler, 12 Eq. 570; 25 L. T. N. S. 202; 40 L. J. Ch. 791; 19 W. R. 1077 . . . . .	38
Bainbridge v. Ashburton, 2 Y. & C. Ex. 347 . . . . .	22
Bainbrigge v. Blair, 1 Bea. 495; 3 Bea. 421; 8 Bea. 588 . . . . .	198,
201, 209, 272, 274	
Baker v. Carter, 1 Y. & C. 250 . . . . .	185
— v. Martin, 5 Sim. 380; 8 Sim. 25 . . . . .	200, 314
— v. Peck, 9 W. R. 472; 8 Jur. N. S. 25; 5 L. T. N. S. 467 . . . . .	183
— Re, 13 Eq. 168; 41 L. J. Ch. 162; 25 L. T. N. S. 783; 23 W. R. 303 . . . . .	249
— v. Read, 18 Bea. 398; 3 W. R. 118; 25 L. T. 18 . . . . .	185, 195
— v. Tucker, 3 H. L. C. 106 . . . . .	152
— v. White, 20 Eq. 166; 44 L. J. Ch. 651; 23 W. R. 670; 33 L. T. N. S. 347 . . . . .	1, 2, 3, 5
Baldwin v. Billingsley, 2 Vern. 539 . . . . .	233
Balfour v. Welland, 16 Ves. 151 . . . . .	125
Ball v. Harris, 4 M. & Cr. 264 . . . . .	122, 123, 126, 128
Balsh v. Hyham, 2 P. W. 453 . . . . .	101
Bank of England Case, 3 D. F. & J. 645 . . . . .	71
Bank of Turkey v. Ottoman Co., 2 Eq. 366; 20 L. T. N. S. 220 . . . . .	276
Bankes v. Le Despencer, 11 Sim. 508 . . . . .	49
Bankhead, Re, 2 K. & J. 560; 4 W. R. 589; 20 Jur. N. S. 480 . . . . .	218
Banks v. Cartwright, 15 W. R. 417 . . . . .	229
Bardswell v. Bardswell, 9 Sim. 319 . . . . .	55
Barff, Ex parte, D. G. 613 . . . . .	336
Barker v. Greenwood, 4 M. & W. 421; 8 L. J. Ex. 5 . . . . .	3
— v. Peile, 2 Dr. & Sm. 340 . . . . .	205
— Re, 1 Ch. D. 43; 45 L. J. Ch. 52; 24 W. R. 264 . . . . .	209
Barkley v. Reay, 2 Ha. 308 . . . . .	272
Barkworth v. Young, 4 Dr. 1 . . . . .	25
Barlow v. Grant, 1 Vern. 254 . . . . .	176, 180
Barnard v. Bagshaw, 3 D. J. & S. 355; 7 L. T. N. S. 544; 9 Jur. N. S. 220 . . . . .	17
Barnes v. Addy, 9 Ch. 244; 28 L. T. N. S. 398; 43 L. J. Ch. 513; 21 W. R. 324; 22 W. R. 505 . . . . .	72, 100, 213, 241, 303
— v. Bond, 32 Bea. 653 . . . . .	96
— v. Grant, 26 L. J. Ch. 92; 2 Jur. N. S. 1127; 5 W. R. 14; 28 L. T. N. S. 78 . . . . .	53, 57
— v. Racster, 1 Y. & C. C. C. 401 . . . . .	78
Barnewall, Ex parte, 6 D. M. & G. 795 . . . . .	220, 325
Barrack v. McCulloch, 3 K. & J. 110; 5 W. R. 38; 26 L. J. Ch. 105; 28 L. T. N. S. 218; 3 Jur. N. S. 180 . . . . .	248, 253

Barrett v. Hartley, 2 Eq. 789 ; 14 L. T. N. S. 474 ; 12 Jur. N. S.	
426 . . . . .	196, 201
Barrington v. Liddell, 2 D. M. & G. 497 ; 22 L. J. Ch. 1 ; 17 Jur.	
241 ; 20 L. T. N. S. 133 . . . . .	155, 156
— v. O'Brien, 1 Ball. & Beatty, 180 . . . . .	166
— Re, 1 J. & H. 142 ; 8 W. R. 577 . . . . .	108, 109
Barrow v. Greenough, 3 Ves. 151 . . . . .	80, 81
— v. Griffith, 11 Jur. N. S. 6 . . . . .	129
— v. Wadkin, 24 Bea. 1 ; 5 W. R. 695 ; 3 Jur. N. S. 679 . . . . .	244
Barrs v. Fewkes, 2 H. & M. 60 . . . . .	59
Barry, Ex parte, 17 Eq. 113 . . . . .	218
Bartholemew v. Meredith, 1 Vern. 276 . . . . .	160
Bartlett v. Bartlett, 4 Ha. 631 . . . . .	275
— v. Gillard, 3 Russ. 149 . . . . .	248
— v. Pickersgill, 1 Ed. 516 . . . . .	67, 68
Bartley v. Bartley, 3 Drew, 385 . . . . .	215
Barton v. Cook, 5 Ves. 461 . . . . .	180
— v. Hassard, 3 Dr. & War. 461 . . . . .	183
— v. Muir, L. R. 6 P. C. 134 ; 44 L. J. Ch. 19 . . . . .	67
Barwell v. Barwell, 34 Bea. 371 . . . . .	194
Bassett v. Nosworthy, 2 W. & T. L. C. 1 ; Finch. 102 . . . . .	192, 293
Bassil v. Lester, 9 Ha. 177 . . . . .	154
Bastard v. Proby, 2 Cox. 6 . . . . .	48, 49
Bate v. Hooper, 5 D. M. & G. 338 ; 3 W. R. 659 . . . . .	92
Bateman v. Davis, 3 Mad. 98 . . . . .	138
— v. Hotchkin, 10 Bea. 426 . . . . .	155
Bath v. Bradford, 2 Ves. Sen. 586 . . . . .	101, 113
Batstone v. Salter, 19 Eq. 250 ; 10 Ch. 431 ; 33 L. T. N. S. 4 ; 44	
L. J. Ch. 760 ; 23 W. R. 816 . . . . .	62, 64, 65
Battier, Ex parte, Buck, 426 . . . . .	16
Baud v. Fardell, 7 D. M. & G. 628 ; 4 W. R. 40 ; 25 L. J. Ch. 21 ;	
26 L. T. N. S. 83 ; 19 Jur. N. S. 1214 . . . . .	131, 132
Baugh v. Price, 1 G. Wils. 320 . . . . .	192, 194
Bayley v. Boulcott, 4 Russ. 345 . . . . .	241
— Re, 6 Ch. 590 ; 25 L. T. N. S. 249 ; 19 W. R. 789 . . . . .	157, 161
Baylies v. Baylies, 1 Coll. 547 . . . . .	222
Bayliss, Re, 17 Sim. 178 . . . . .	257
Baynard v. Woolley, 20 Bea. 583 . . . . .	231, 332
Bayspoole v. Collins, 6 Ch. 228 ; 25 L. T. N. S. 282 ; 40 L. J. Ch.	
289 ; 18 W. R. 730 . . . . .	36
Beal v. Beal, Pr. Ch. 405 . . . . .	167
Beale v. Beale, 1 P. W. 243 . . . . .	159
Beale, Re, 4 Ch. D. 246 ; 46 L. J. Bank. 17 ; 35 L. T. N. S. 768 ;	
25 W. R. 324 . . . . .	137

	PAGE
Beales <i>v.</i> Spencer, 2 Y. & C. C. C. 651 . . . . .	255
Beaucklerk <i>v.</i> Ashburnham, 8 Bea. 322 . . . . .	146
Beaufort <i>v.</i> Berty, 1 P. W. 704 . . . . .	311
Beaumont <i>v.</i> Beaumont, cited 3 Mer. 695 . . . . .	273
— <i>v.</i> Salisbury, 19 Bea. 198 ; 24 L. J. Ch. 94 ; 24 L. T. 166 ; 3 Eq. Rep. 369 . . . . .	9
Beckford <i>v.</i> Beckford, Lofft. 490 . . . . .	65
— <i>v.</i> Kemble, 1 S. & S. 7 . . . . .	245
— <i>v.</i> Wade, 17 Ves. 87 . . . . .	313
Bective <i>v.</i> Hodgson, 10 H. L. C. 656 . . . . .	154
Beddoes <i>v.</i> Pugh, 26 Bea. 407 . . . . .	233
Bedford <i>v.</i> Abercorn, 1 M. & Cr. 312 . . . . .	50
Beecher <i>v.</i> Major, 2 Dr. & Sm. 431 ; 13 W. R. 853 . . . . .	62, 65, 66, 67
Beilby, <i>Ex parte</i> , 1 G. & J. 175 . . . . .	220
Beioley <i>v.</i> Carter, 4 Ch. 230 ; 38 L. J. Ch. 92 ; 20 L. T. N. S. 381 . . . . .	119
Belchier, <i>Ex parte</i> , Amb. 218 . . . . .	20, 98
Bellasis <i>v.</i> Compton, 2 Vern. 294 . . . . .	61, 68
— <i>Re</i> , 12 Eq. 218 . . . . .	46
— <i>v.</i> Uthwatt, 1 Atk. 426 . . . . .	169
Bellis, <i>Re</i> , 5 Ch. D. 509 ; 46 L. J. Ch. 353 ; 36 L. T. N. S. 644 . . . . .	21
Benbow <i>v.</i> Davis, 11 Bea. 369 . . . . .	11
— <i>v.</i> Townsend, 1 M. & K. 506 . . . . .	68
Bengough <i>v.</i> Walker, 15 Ves. 507 . . . . .	169
Bennet <i>v.</i> Davis, 2 P. W. 316 . . . . .	247
Bennett <i>v.</i> Bennett, 2 Dr. & Sm. 272 ; 34 L. J. Ch. 34 ; 13 W. R. 66 ; 11 L. T. N. S. 362 . . . . .	7
— <i>v.</i> Burgis, 5 Ha. 296 . . . . .	208
— <i>v.</i> Colley, 2 M. & K. 225 . . . . .	150, 151, 274
— <i>Ex parte</i> , 10 Ves. 394 . . . . .	182, 190, 191, 192
— <i>v.</i> Houldsworth, 6 Ch. D. 671 ; 46 L. J. Ch. 646 ; 36 L. T. N. S. 648 . . . . .	170
— <i>v.</i> Lytton, 2 J. & H. 158 . . . . .	127
— <i>v.</i> Wyndham, 23 Bea. 521 . . . . .	118, 155, 164
Benson <i>v.</i> Benson, 6 Sim. 126 . . . . .	250
Bentley <i>v.</i> Mackay, 15 Bea. 12 ; 10 W. R. 593, 873 ; 6 L. T. N. S. 632 . . . . .	34
Beresford <i>v.</i> Beresford, 23 Bea. 292 . . . . .	327
Berkley, <i>Re</i> , 9 Ch. 720 ; 43 L. J. Ch. 703 . . . . .	211
Bernard <i>Ex parte</i> , 6 Ir. Ch. R. 133 . . . . .	157
— <i>v.</i> Minshull, Johns. 276 . . . . .	53, 56
— <i>v.</i> Mountague, 1 Mer. 422 . . . . .	161
Berrington <i>v.</i> Evans, 1 Y. & C. 434 . . . . .	314
Berry <i>v.</i> Berry, 7 Ch. D. 657 ; 47 L. J. Ch. 182 ; 26 W. R. 327 . . . . .	3

	PAGE
Berry v. Briant, 2 Dr. & Sm. 1 ; 10 W. R. 242 ; 31 L. J. Ch. 327 ; 8 Jur. N. S. 69 ; 5 L. T. N. S. 818 . . . . .	175
Berwick, Mayor of, v. Murray, 7 D. M. & G. 519 . . . . .	285
Bestall v. Bunbury, 13 I. Ch. R. 318 . . . . .	259
Bethell v. Abraham, 17 Eq. 24 ; 43 L. J. Ch. 180 ; 29 L. T. N. S. 715 ; 31 L. T. N. S. 112 . . . . .	88, 139, 144
—— v. —— 3 Ch. D. 590 n. . . . .	169
Bethune v. Kennedy, 1 M. & Cr. 114 . . . . .	92
Bevan v. Habgood, 1 J. & H. 222 ; 8 W. R. 703 . . . . .	186
—— v. Waterhouse, 3 Ch. D. 752 ; 46 L. J. Ch. 331 . . . . .	139
Bibby v. Thompson, 32 Bea. 646 . . . . .	57
Bick v. Motly, 2 M. & K. 312 . . . . .	219
Biddulph, Ex parte, 3 D. G. & Sm. 587 . . . . .	219
—— v. Williams, 1 Ch. D. 203 . . . . .	60
Biel, Re, 16 Eq. 577 ; 42 L. J. Ch. 556 ; 28 L. T. N. S. 835 ; 21 W. R. 808 . . . . .	185
Bignold, Re, 7 Ch. 223 ; 41 L. J. Ch. 235 ; 26 L. T. N. S. 176 ; 21 W. R. 345 . . . . .	210
Bill v. Cureton, 2 M. & K. 511 . . . . .	41
Billingsley v. Critchet, 1 B. C. C. 268 . . . . .	174
Bindley v. Mulloney, 7 Eq. 343 ; 20 L. T. N. S. 263 ; 17 W. R. 510 . . . . .	84
Bingham v. Clanmorris, 2 Moll. 253 . . . . .	10
Binks v. Rokeby, 2 Mad. 227 . . . . .	121, 125
Binns v. Parr, 7 Ha. 288 . . . . .	275
Birch v. Blagrove, Amb. 264 . . . . .	85
—— v. Cropper, 2 D. G. & Sm. 255 . . . . .	212
—— Re, 17 Bea. 358 . . . . .	104
—— v. Wade, 3 V. & B. 198 . . . . .	52, 56
Birch-Wolfe v. Birch, 9 Eq. 683 ; 39 L. J. Ch. 345 ; 23 L. T. N. S. 216 ; 18 W. R. 594 . . . . .	313
Bird, Re, 16 Eq. 203 ; 28 L. T. N. S. 658 ; 21 W. R. 725 . . . . .	19, 100, 241
Birks v. Micklethwait, 33 Bea. 409 ; 34 L. J. Ch. 362 ; 10 Jur. N. S. 302 . . . . .	332
Birls v. Betty, 6 Mad. 90 . . . . .	331
Birmingham Blue Coat School, Re, 1 Eq. 632 . . . . .	134
Biron v. Mount, 24 Bea. 642 ; 27 L. J. Ch. 191 ; 4 Jur. N. S. 43 ; 30 L. T. 344 . . . . .	37, 38
Biscoe v. Perkins, 1 V. & B. 491 . . . . .	295
Bishop v. Bishop, 9 W. R. 549 ; 4 L. T. N. S. 350 . . . . .	135
—— Ex parte, 8 Ch. 718 ; 42 L. J. Bank. 107 ; 28 L. T. N. S. 862 ; 21 W. R. 716 . . . . .	220
—— v. Wall, 3 Ch. D. 194 ; 45 L. J. Ch. 773 ; 25 W. R. 93 . . . . .	258
Bizzey v. Flight, 24 W. R. 957 . . . . .	30
Blackburn v. Stables, 2 V. & B. 367 . . . . .	47



	PAGE
Blacklow <i>v.</i> Laws, 2 Ha. 40 . . . . .	116, 256
Blagrove <i>v.</i> Blagrove, 4 Exch. 550 ; 19 L. J. Ex. 414 . . . . .	5, 6
Blagrove <i>v.</i> Hancock, 16 Sim. 371 . . . . .	49
Blair <i>v.</i> Nugent, 3 J. & L. 660 . . . . .	307
— <i>v.</i> Ormond, 1 D. G. & Sm. 428 . . . . .	317
Blake <i>v.</i> Blake, 1 Cox. 266 . . . . .	77
— <i>v.</i> — 18 W. R. 944 . . . . .	246
— <i>v.</i> Bunbury, 1 Ves. Jur. 514 . . . . .	222
— <i>v.</i> Foster, 8 T. R. 487 . . . . .	221
Blakely <i>v.</i> Brady, 2 Dr. & Walsh. 311 . . . . .	34
Blanchard, Re, 3 D. F. & J. 131 ; 30 L. J. Ch. 516 . . . . .	215
Blann <i>v.</i> Bell, 2 D. M. & G. 775 . . . . .	92
Bleazard <i>v.</i> Whalley, 2 Eq. R., Pt. II., 1095 ; 2 W. R. 608 . . . . .	106
Blewett <i>v.</i> Millett, 7 B. P. C. 367 . . . . .	73
Blodwell <i>v.</i> Edwards, Cro. Eliz. 509 . . . . .	83
Blogg <i>v.</i> Johnson, 2 Ch. 228 ; 36 L. J. Ch. 859 ; 16 L. T. N. S. 306 ; 15 W. R. 626 . . . . .	284
Blomfield <i>v.</i> Eyre, 8 Bea. 250 . . . . .	311, 323
Bloye, Re, 1 Macn. & G. 488 . . . . .	186
Blue <i>v.</i> Marshall, 3 P. W. 381 . . . . .	89, 102
Boddington <i>v.</i> Langford, 15 Ir. Ch. R. 558 n. . . . .	188
Boddy <i>v.</i> Dawes, 1 Keen. 362 . . . . .	173
Bodenham <i>v.</i> Hoskyns, 2 D. M. & G. 903 . . . . .	302
Bold <i>v.</i> Hutchinson, 5 D. M. & G. 558 ; 4 W. R. 3 ; 27 L. T. N. S. 179 ; 20 Jur. 97 . . . . .	45, 46
Bolton <i>v.</i> Stannard, 4 Jur. N. S. 576 ; 6 W. R. 570 . . . . .	128
Bond's case, 2 Ch. Ca. 165 . . . . .	167
Bone <i>v.</i> Cook, McClel. 168 . . . . .	238
— <i>v.</i> Pollard, 24 Bea. 282 . . . . .	63
Bonney <i>v.</i> Ridgard, 1 Cox. 145 . . . . .	313
Bonsor <i>v.</i> Kinnear, 2 Giff. 195 ; 2 L. T. N. S. 345 . . . . .	52
Booth <i>v.</i> Booth, 1 Bea. 125 ; 8 L. J. Ch. 39 . . . . .	13, 18, 239, 325
— <i>v.</i> Coulton, 7 Jur. N. S. 207 ; 30 L. J. Ch. 378 ; 9 W. R. 330 ; 3 L. T. N. S. 770 . . . . .	92
— Ex parte, Mont. 248 . . . . .	17
— <i>v.</i> Leycester, 3 M. & Cr. 459 . . . . .	284
Bootle <i>v.</i> Blundell, 19 Ves. 528 . . . . .	164
Boschetti <i>v.</i> Power, 8 Bea. 98 . . . . .	275
Bostock <i>v.</i> Floyer, 1 Eq. 26 ; 35 L. J. Ch. 23 ; 13 L. T. N. S. 489 ; 11 Jur. N. S. 962 ; 14 W. R. 120 . . . . .	17, 19, 98, 142, 235
Boughton <i>v.</i> James, 1 H. L. C. 406 . . . . .	152
Boulton <i>v.</i> Beard, 3 D. M. & G. 611 . . . . .	232
— Ex parte, 1 D. & J. 163 . . . . .	289
Bourdillon <i>v.</i> Roche, 27 L. J. Ch. 681 ; 6 W. R. 618 ; 31 L. T. 264 . . . . .	325

	PAGE
<i>Bourne v. Mole</i> , 8 Bea. 177 . . . . .	275
<i>Poursot v. Savage</i> , 2 Eq. 134 ; 35 L. J. Ch. 627 . . . . .	297, 298
<i>Bousfield v. Hodges</i> , 33 Bea. 90 . . . . .	112, 113
<i>Bovey v. Smith</i> , 1 Vern. 60 . . . . .	296
<i>Bowden v. Bowden</i> , 17 Sim. 65 . . . . .	92
<i>Bowes v. City of Toronto</i> , 11 Moo. P. C. 463 . . . . .	287
— <i>v. East London Waterworks Co.</i> , 3 Mad. 375 . . . . .	323
— <i>v. Strathmore</i> , 8 Jur. 92 . . . . .	106
<i>Bowles v. Stewart</i> , 1 Sch. & L. 230 . . . . .	78
<i>Box, Re</i> , 11 W. R. 945 . . . . .	109
<i>Boyce v. Corbally</i> , Ll. & G. t. Plunk. 102 . . . . .	12, 104
— <i>Re</i> , I. R. 1 Eq. 45 ; 15 W. R. 827 . . . . .	135
<i>Boycot v. Cotton</i> , 1 Atk. 553 . . . . .	167
<i>Boycott, Re</i> , 5 W. R. 15 ; 28 L. J. Ch. 120 . . . . .	212
<i>Boyd v. Boyd</i> , 4 Eq. 305 . . . . .	180
— <i>Re</i> , 42 L. J. Ch. 506 . . . . .	134
<i>Boys v. Boys</i> , 28 Bea. 436 . . . . .	92
<i>Bradby v. Whitchurch</i> , W. N. (1868) 81 . . . . .	102
<i>Bradford v. Brownjohn</i> , 3 Ch. 711 ; 37 L. J. Ch. 198 ; 18 L. T. N. S. 388 ; 16 W. R. 1178 ; 38 L. J. Ch. 10 . . . . .	73, 150, 151
<i>Bradley v. Hughes</i> , 8 Sim. 149 . . . . .	250
<i>Bradwell v. Catchpool</i> , 3 Swans. 78 n. . . . .	18
<i>Brandling v. Plummer</i> , 6 W. R. 118 ; 27 L. J. Ch. 188 . . . . .	41
<i>Brandon v. Robinson</i> , 18 Ves. 429 . . . . .	84
<i>Brasier v. Hudson</i> , 9 Sim. 1 . . . . .	125
<i>Brassey v. Chalmers</i> , 4 D. M. & G. 528 . . . . .	123
<i>Brathwaite v. Brathwaite</i> , 1 Vern. 334 . . . . .	159, 160
<i>Bray v. West</i> , 9 Sim. 429 . . . . .	11
<i>Braybrooke v. Inskip</i> , 8 Ves. 417 . . . . .	21, 22
<i>Breadalbane v. Chandos</i> , 2 M. & Cr. 711 . . . . .	45, 245
<i>Breary, Re</i> , W. N., 1873, 48 . . . . .	203, 212
<i>Breedon v. Breedon</i> , 1 R. & M. 413 . . . . .	125
<i>Breeds, Re</i> , 1 Ch. D. 228 ; 45 L. J. Ch. 191 ; 24 W. R. 200 . . . . .	171, 172, 175, 180
<i>Brenan v. Brenan</i> , I. R. Eq. 266 . . . . .	51
<i>Brentnall, Re</i> , W. N., 1872, 77 . . . . .	211
<i>Brereton v. Hutchinson</i> , 2 Ir. Ch. R. 648 ; 3 Ir. Ch. R. 361 . . . . .	314
<i>Brettell, Ex parte</i> , 6 Ves. 577 . . . . .	22
<i>Brewster v. Angell</i> , 1 J. & W. 628 . . . . .	50
<i>Brice v. Stokes</i> , 11 Ves. 319 . . . . .	114, 238, 239, 334
<i>Bridge v. Beadon</i> , 3 Eq. 664 ; 36 L. J. Ch. 351 ; 15 W. R. 527 . . . . .	292
— <i>v. Bridge</i> , 16 Bea. 315 . . . . .	35
— <i>v. Brown</i> , 2 Y. & C. C. C. 181 . . . . .	176
<i>Bridges v. Longman</i> , 24 Bea. 27 . . . . .	123

	PAGE
Bridgman <i>v.</i> Gill, 24 Bea. 302 . . . . .	302
— Re, 1 Dr. & Sm. 164; 8 W. R. 598; 2 L. T. N. S. 560	209
Briggs <i>v.</i> Penny, 3 Macn. & G. 546 . . . . .	52, 53, 56
Bright <i>v.</i> Legerton, 2 D. F. & J. 606; 9 W. R. 239; 30 L. J. Ch.	
338; 7 Jur. N. S. 559; 3 L. T. N. S. 713 . . . . .	317
Bristow <i>v.</i> Whitmore, 4 K. & J. 743 . . . . .	234
British Mutual Co. <i>v.</i> Smart, 10 Ch. 567 . . . . .	335
Brittlebank <i>v.</i> Goodwin, 5 Eq. 545; 37 L. J. Ch. 377; 16 W. R.	
696 . . . . .	88, 314
Britton <i>v.</i> Twining, 3 Mer. 176 . . . . .	47
Broadhurst <i>v.</i> Balguy, 1 Y. & C. C. C. 16 . . . . .	240
Broadmead <i>v.</i> Wood, 1 B. C. C. 77 . . . . .	162
Brocksopp <i>v.</i> Barnes, 5 Mad. 90 . . . . .	201
Brodie <i>v.</i> Barry, 3 Mer. 695 . . . . .	273
Brome <i>v.</i> Berkley, 6 B. P. C. 108 . . . . .	163
Bromley <i>v.</i> Kelly, 39 L. J. Ch. 274; 18 W. R. 374 . . . . .	143
Brook <i>v.</i> Brook, 1 Bea. 531 . . . . .	212
Brooke <i>v.</i> Brooke, 25 Bea. 342; 4 Jur. N. S. 472; 31 L. T. 244 . . . . .	253
— <i>v.</i> Haymes, 6 Eq. 25 . . . . .	12, 13, 14
Brooker <i>v.</i> Brooker, 3 Sm. & G. 475; 5 W. R. 382; 26 L. J. Ch.	
411; 28 L. T. N. S. 354; 3 Jur. N. S. 381 . . . . .	328
Brookman <i>v.</i> Hales, 2 V. & B. 45 . . . . .	75
Brophy <i>v.</i> Bellamy, 8 Ch. 798; 43 L. J. Ch. 183; 29 L. T. N. S.	
380 . . . . .	173
Brotherton <i>v.</i> Hatt, 2 Vern. 574 . . . . .	297
Broughton <i>v.</i> Broughton, 5 D. M. & G. 160 . . . . .	197, 201
Broun <i>v.</i> Kennedy, 4 D. J. & Sm. 217 . . . . .	191
Browell <i>v.</i> Reid, 1 Ha. 434; 11 L. J. Ch. 272 . . . . .	11, 273
Brown <i>v.</i> Adams, 4 Ch. 764; 21 L. T. N. S. 71; 17 W. R. 777	99, 302
— <i>v.</i> Bamford, 1 Ph. 620 . . . . .	266
— <i>v.</i> De Tastet, Jac. 284 . . . . .	198
— <i>v.</i> Gellatly, 2 Ch. 751; 15 W. R. 1188 . . . . .	93, 94, 96
— <i>v.</i> Higgs, 4 Ves. 708; 8 Ves. 561; 18 Ves. 192 . . . . .	54, 57, 103
— <i>v.</i> How, Barn. 357 . . . . .	221
— <i>v.</i> Litton, 1 P. W. 139 . . . . .	199
— Re, 10 Eq. 349; 39 L. J. Ch. 845 . . . . .	116, 117
— Re, 5 Eq. 88; 37 L. J. Ch. 171 . . . . .	290
— <i>v.</i> Temperley, 3 Russ. 263 . . . . .	171
— <i>v.</i> Whiteway, 8 Ha. 145 . . . . .	3, 7
Brown and Sibly, Re, 3 Ch. D. 156; 35 L. T. N. S. 305; 24 W.	
R. 782 . . . . .	21
Browne <i>v.</i> Butter, 24 Bea. 159 . . . . .	100
— <i>v.</i> Cavendish, 1 J. & L. 637 . . . . .	35
— <i>v.</i> Cross, 14 Bea. 105 . . . . .	320

	PAGE
Browne v. Paull, 1 Sm. N. S. 92 . . . . .	177
— v. Savage, 4 Drew. 640 ; 7 W. R. 571 . . . . .	290
— v. Stoughton, 14 Sim. 369 . . . . .	152
Bruen v. Bruen, 2 Vern. 438 . . . . .	160
Bruin v. Knott, 1 Ph. 572 . . . . .	176, 177
Brumridge v. Brumridge, 27 Bea. 5 . . . . .	238, 239
Brunskill v. Caird, 16 Eq. 493 ; 21 W. R. 943 . . . . .	105
Bryan v. Collins, 16 Bea. 17 . . . . .	154
Buckeridge v. Glasse, Cr. & Ph. 103 ; 10 L. J. Ch. 134 . . . . .	12, 334
Buckhurst Peerage case, L. R. 2 App. Ca. 1 . . . . .	83, 242
Buckley v. Howell, 29 Bea. 546 . . . . .	118
Buckworth v. Buckworth, 1 Cox, 80 . . . . .	174
Budge v. Gummow, 7 Ch. 719 ; 42 L. J. Ch. 22 ; 27 L. T. N. S. 666 ; 20 W. R. 1022 . . . . .	141
Buffery, Ex parte, 2 D. & C. 577 . . . . .	209
Bugg, Ex parte, 2 Dr. & Sm. 452 . . . . .	140
Buggins v. Yates, 9 Mod. 122 . . . . .	55, 58, 59
Bulkeley v. Eglinton, 1 Jur. N. S. 994 . . . . .	11
Bullock v. Wheatley, 1 Coll. 130 . . . . .	88
Bullpin v. Clarke, 17 Ves. 365 . . . . .	262
Bulsteel v. Abinger, 6 Jur. 410 . . . . .	111, 114
Bunbury v. Bunbury, 1 Bea. 318 . . . . .	245, 246
Bunn's case, 2 D. F. & J. 300 . . . . .	140
Burden v. Burden, cited 1 J. & W. 135 . . . . .	286
Burdick v. Garrick, 5 Ch. 233 ; 39 L. J. Ch. 661 . . . . .	284, 285, 287, 309
Burgess v. Wheate, 1 Ed. 177, 196 . . . . .	243, 269, 271
Burke v. Jones, 2 V. & B. 275 . . . . .	39
Burnell, Ex parte, 7 Jur. 116 . . . . .	188
Burney v. Macdonald, 15 Sim. 6 . . . . .	81
Burridge v. Row, 1 Y. & C. C. C. 183 . . . . .	327
Burrough v. Philcox, 5 M. & Cr. 92 . . . . .	103
Burroughs v. M'Creight, 1 J. & L. 290 . . . . .	315
Burrowes v. Gore, 6 H. L. C. 907 ; 6 W. R. 699 . . . . .	308, 311, 315
Burrows v. Walls, 5 D. M. & G. 233 ; 3 W. R. 327 ; 25 L. T. 18 . . . . .	229
Burt v. Dennet, 2 B. C. C. 225 . . . . .	18
— Re, 1 Dr. 319 . . . . .	20
— v. Sturt, 10 Ha. 415 . . . . .	156
Burton v. Hastings, Gilb. 113 . . . . .	45
— v. Mount, 2 D. G. & Sm. 383 . . . . .	92
— v. Sturgeon, 2 Ch. D. 318 ; 45 L. J. Ch. 633 ; 34 L. T. N. S. 706 ; 18 W. R. 480 . . . . .	235
Bush v. Shipman, 14 Sim. 239 . . . . .	38
Bushby v. Munday, 5 Mad. 307 . . . . .	245
Butcher v. Butcher, 1 V. & B. 79 . . . . .	157

	PAGE
Butler <i>v.</i> Butler, 7 Ch. D. 116; 46 L. J. Ch. 548 . . . . .	144, 332
— <i>v.</i> Carter, 5 Eq. 276; 37 L. J. Ch. 270; 18 L. T. N. S. 11; 16 W. R. 388 .. . . .	88, 320, 322, 333
— <i>v.</i> Cumpston, 7 Eq. 16; 38 L. J. Ch. 35; 19 L. T. N. S. 274; 17 W. R. 24. . . . .	262
— <i>v.</i> Duncomb, 1 P. W. 448 . . . . .	163, 166
— <i>v.</i> Plunkett, 1 J. & H. 441 . . . . .	290
Buttanshaw <i>v.</i> Martin, Johns. 89; 33 L. T. 300; 5 Jur. N. S. 647	224, 251
Butterfield, <i>Ex parte</i> , 1 De G. 319 . . . . .	90, 137
Buxton <i>v.</i> Buxton, 1 M. & Cr. 80 . . . . .	88, 89, 114, 205
Byrchall <i>v.</i> Bradford, 6 Madd. 240 . . . . .	13
Byrne <i>v.</i> Norcott, 13 Bea. 336 . . . . .	87, 337
Byron <i>v.</i> Cooper, 11 Cl. & F. 556 . . . . .	316
CAPETT <i>v.</i> Earle, 5 Ch. D. 710; 46 L. J. Ch. 798 . . . . .	139
Cadogan <i>v.</i> Essex, 2 Drew. 227; 2 W. R. 313; 23 L. J. Ch. 487; 2 Eq. Rep. 551 . . . . .	146
Cafe <i>v.</i> Bent, 3 Ha. 245; 5 Ha. 24 . . . . .	92, 93, 205, 208
Caffrey <i>v.</i> Darby, 6 Ves. 488 . . . . .	88, 325, 328
Caldecott <i>v.</i> Brown, 2 Ha. 144 . . . . .	106
— <i>v.</i> Caldecott, 1 Y. & C. C. C. 312, 737 . . . . .	93, 95, 97
— <i>v.</i> — 4 Mad. 189 . . . . .	132
Caldwell, <i>Re</i> , 13 Eq. 188; 20 W. R. 363 . . . . .	219, 289
Callendar <i>v.</i> Teasdale, 3 W. R. 289; 3 Eq. Rep. 513; 24 L. T. 322	234
Callow <i>v.</i> Howle, 1 D. G. & Sm. 531 . . . . .	262
Camden <i>v.</i> Anderson, 5 T. R. 709 . . . . .	67
Camoy's <i>v.</i> Best, 19 Bea. 414 . . . . .	209
Campbell <i>v.</i> Home, 1 Y & C. C. C. 664 . . . . .	224, 233
— <i>Re</i> , 31 Bea. 176; 31 L. J. Ch. 821; 8 Jur. N. S. 1199; 10 W. R. 640 . . . . .	211, 212
— <i>v.</i> Walker, 5 Ves. 678; 13 Ves. 601	184, 191, 192, 193, 195, 317
Candler <i>v.</i> Tillett, 22 Bea. 257 . . . . .	240
Cane <i>v.</i> Allen, 2 Dow. 289 . . . . .	190
Caney <i>v.</i> Bond, 6 Bea. 486 . . . . .	87
Cannings <i>v.</i> Flower, 7 Sim. 523 . . . . .	176
Cantley, <i>Re</i> , 17 Jur. 124 . . . . .	21, 22
Cape <i>v.</i> Cape, 2 Y. & C. Ex. 543 . . . . .	256
Cardross, <i>Re</i> , 7 Ch. D. 728 . . . . .	251
Carlisle <i>v.</i> Berkley, Amb. 599 . . . . .	274
Carlyon <i>v.</i> Truscott, 20 Eq. 348; 44 L. J. 186; 32 L. T. N. S. 50; 23 W. R. 302 . . . . .	126, 127

	PAGE
<i>Carne v. Long</i> , 2 D. F. & J. 75 ; 29 L. J. Ch. 503 ; 8 W. R. 570 ; 6 Jur. N. S. 639 ; 2 L. T. N. S. 552 . . . . .	153
<i>Carpenter, Re, Kay</i> , 418 . . . . .	210, 216
<i>Carr v. Erroll</i> , 14 Ves. 478 . . . . .	51
— <i>v. Living</i> , 28 Bea. 647 ; 30 Bea. 474 . . . . .	175
<i>Carter v. Barnadiston</i> , 1 P. W. 505 . . . . .	7
— <i>v. Carter</i> , 3 K. & J. 617 ; 27 L. J. Ch. 74 ; 4 Jur. N. S. 63 ; 30 L. T. 349 . . . . .	294, 297
— <i>v. Green</i> , 3 K. & J. 603 . . . . .	81
— <i>v. Palmer</i> , 8 Cl. & F. 657 . . . . .	191
— <i>v. Sebright</i> , 26 Bea. 376 ; 28 L. J. Ch. 411 ; 7 W. R. 225 ; 32 L. T. 348 ; 5 Jur. N. S. 259 . . . . .	215
<i>Cartwright v. Cartwright</i> , 3 D. M. & G. 982 . . . . .	84
<i>Carwardine v. Carwardine</i> , 1 Ed. 36 . . . . .	2
<i>Cary v. Cary</i> , 2 Sch. & L. 173 . . . . .	53, 188
<i>Casborne v. Scarfe</i> , 1 Atk. 605 . . . . .	269
<i>Casburne v. Inglis</i> , 2 J. & W. 194 . . . . .	271
<i>Case v. Drosier</i> , 2 Keen, 764 ; 5 M. & Cr. 246 . . . . .	152
<i>Castle v. Warland</i> , 32 Bea. 660 ; 2 N. R. 433 . . . . .	18, 100
<i>Cater v. Croydon Canal Co.</i> , 4 Y. & C. 405 . . . . .	308
— <i>Re</i> , 25 Bea. 366 . . . . .	237
<i>Catling v. King</i> , 5 Ch. D. 660 ; 46 L. J. Ch. 384 ; 36 L. T. N. S. 526 ; 25 W. R. 550 . . . . .	26, 112
<i>Caton v. Caton</i> , L. R. 2 H. L. 127 . . . . .	26
— <i>v. Rideout</i> , 1 Macn. & G. 601 . . . . .	249
<i>Cave v. Mackenzie</i> , 46 L. J. Ch. 564 . . . . .	68
— <i>v. Roberts</i> , 8 Sim. 214 . . . . .	244
<i>Cavendish v. Cavendish</i> , 10 Ch. 319 . . . . .	117
— <i>v. Mercer</i> , 5 Ves. 195 n. . . . .	172
<i>Cecil v. Butcher</i> , 2 J. & W. 565 . . . . .	35
<i>Chadwick v. Doleman</i> , 2 Vern. 527 . . . . .	157
— <i>v. Heatley</i> , 2 Coll. 137 . . . . .	236
<i>Challen v. Shippam</i> , 4 Ha. 557 . . . . .	99
<i>Chalmer v. Bradley</i> , 1 J. & W. 51 . . . . . 194, 195, 313, 317, 318, 321	
<i>Chamberlain v. Chamberlain</i> , 1 Ch. Ca. 256 . . . . .	80
<i>Chambers v. Chambers</i> , Fitzgibbon, 127 . . . . .	45
— <i>v. —</i> 15 Sim. 183 . . . . .	92
— <i>v. Davidson</i> , L. R. 1 P. C. 296 . . . . .	199
— <i>Ex parte</i> , 1 R. & M. 577 . . . . .	176
— <i>v. Goldwin</i> , 5 Ves. 834 ; 9 Ves. 254 ; 11 Ves. 1 173, 199, 201, 310	
— <i>v. Howell</i> , 11 Bea. 6 . . . . .	116, 188
— <i>v. Minchin</i> , 7 Ves. 185 . . . . .	17, 18, 238
— <i>v. Smith</i> , L. R. 3 App. Ca. 795 . . . . .	84, 231

	PAGE
<i>Champion v. Rigby</i> , 1 R. & My. 539 . . . . .	193, 194, 195
<i>Champney v. Champney</i> , 10 Mod. 315 . . . . .	163
<i>Chandler, Re</i> , 22 Bea. 253 . . . . .	282
<i>Chaplin v. Chaplin</i> , 3 P. W. 245 . . . . .	169
— <i>Ex parte</i> , 3 Y. & C. 397 . . . . .	132
— <i>v. Young</i> , 33 Bea. 414 . . . . .	198
<i>Charitable Donations, Commissioners of, v. Wybrants, J. &amp; L.</i>	182
	126, 311
<i>Charlton v. Durham</i> , 4 Ch. 433 ; 20 L. T. N. S. 467 ; 17 W. R. 995 ;	
38 L. J. Ch. 183 . . . . .	19, 139
— <i>v. Rendall</i> , 11 Ha. 296 . . . . .	51
<i>Charter v. Trevelyan</i> , 11 Cl. & F. 714 . . . . .	187, 195, 322
<i>Chattock v. Muller</i> , 8 Ch. D. 177 . . . . .	68
<i>Chawner, Re</i> , 8 Eq. 569 ; 38 L. J. Ch. 726 ; 22 L. T. N. S. 262	
	109, 123
<i>Chedworth v. Edwards</i> , 8 Ves. 46 . . . . .	99, 301
<i>Chertsey Market case</i> , 6 Price, 279 . . . . .	279
<i>Chetham v. Hoare</i> , 9 Eq. 571 ; 39 L. J. Ch. 376 ; 22 L. T. N. S. 57	322
<i>Chichester v. Coventry</i> , L. R. 2 H. L. 92 . . . . .	169, 170
<i>Child v. Child</i> , 20 Bea. 50 . . . . .	137, 138
<i>Childers v. Childers</i> , 3 K. & J. 310 ; 1 D. & J. 482 ; 26 L. J. Ch.	
743 ; 5 W. R. 586 . . . . .	26, 63, 67, 85
<i>Childs, Re</i> , 9 Ch. 508 ; 43 L. J. Bk. 89 ; 30 L. T. N. S. 447 . . . . .	137
<i>Cholmondeley v. Cholmondeley</i> , 14 Sim. 590 . . . . .	54
— <i>v. Clinton</i> , 2 Mer. 362 ; 2 J. & W. 190 . . . . .	310, 318
<i>Christie v. Gosling</i> , L. R. 1 H. L. 279 . . . . .	51
— <i>v. Ovington</i> , 1 Ch. D. 279 ; 24 W. R. 204 . . . . .	224
<i>Christophers v. White</i> , 10 Bea. 523 . . . . .	197
<i>Christ's Hospital v. Budgin</i> , 2 Vern. 683 . . . . .	61
— <i>Ex parte</i> , 2 H. & M. 166 . . . . .	144
<i>Christy v. Courtenay</i> , 13 Bea. 96 . . . . .	62, 66
<i>Chubb v. Stretch</i> , 9 Eq. 559 ; 39 L. J. Ch. 329 ; 22 L. T. N. S. 86 ;	
18 W. R. 483 . . . . .	263
<i>Churchill v. Hobson</i> , 1 P. W. 241 . . . . .	19
<i>Churchman v. Harvey</i> , Amb. 335 . . . . .	163
<i>Clack v. Carlon</i> , 30 L. J. Ch. 640 ; 9 W. R. 568 ; 7 Jur. N. S. 44 :	
4 L. T. N. S. 361 . . . . .	197, 198
— <i>v. Holland</i> , 19 Bea. 271 ; 2 W. R. 402 . . . . .	88, 326
<i>Clanricarde v. Henning</i> , 30 Bea. 175 ; 30 L. J. Ch. 865 ; 7 Jur.	
N. S. 1113 ; 9 W. R. 912 . . . . .	313
<i>Clark v. Hoskins</i> , W. N. 1867, 216 . . . . .	207
— <i>v. Jaques</i> , 1 Bea. 36 . . . . .	266
— <i>v. Seymour</i> , 7 Sim. 67 . . . . .	116
<i>Clarke v. Callow</i> , 46 L. J. Q. B. 53 . . . . .	26

	PAGE
Clarke v. Hogg, 19 W. R. 617 . . . . .	178
— v. Ormonde, 1 Jac. 120 . . . . .	229
— v. Panopticon, The, 4 Drew, 26 . . . . .	123
— v. Parker, 19 Ves. 1 . . . . .	12, 104, 162
— v. Swaile, 2 Ed. 134 . . . . .	184, 194
— v. Willott, L. R. 7 Ex. 313 . . . . .	36
Clay v. Rufford, 5 D. G. & Sm. 768 . . . . .	120
Claydon v. Finch, 15 Eq. 266 ; 42 L. J. Ch. 416 ; 28 L. T. N. S. 101 . . . . .	266, 268
Claypole, Rector of, Ex parte, 16 Eq. 574 ; 42 L. J. Ch. 776 . . . . .	105
Clayton's case, 1 Mer. 572 . . . . .	302
Clegg v. Edmondson, 8 D. M. G. 787 ; 27 L. T. N. S. 117 ; 3 Jur. N. S. 299 . . . . .	73, 76
— v. Fishwick, 1 McN. & G. 300 . . . . .	76
Clements v. Hall, 2 D. & J. 173 ; 6 W. R. 358 ; 27 L. J. Ch. 349 ; 4 Jur. N. S. 495 ; 31 L. T. 1 . . . . .	70, 76
Clergy Orphan Corporation, Re, 18 Eq. 280 ; 30 L. T. N. S. 806 ; 22 W. R. 789 . . . . .	109
Clinton, Re, 8 W. R. 492 . . . . .	15
Clissold, Re, 10 L. T. N. S. 642 . . . . .	211
Clive v. Carew, 1 J. & H. 199 ; 7 W. R. 433 ; 5 Jur. N. S. 487 ; 33 L. T. 161 . . . . .	265, 266
— v. Clive, 7 Ch. 433 ; 41 L. J. Ch. 386 ; 26 L. T. N. S. 409 ; 20 W. R. 477 . . . . .	49
Clough v. Bond, 3 M. & Cr. 490 ; 8 L. J. Ch. 51 . . . . .	17, 100, 131, 214
— v. Clough, 5 Ves. 710 . . . . .	165
Clutton, Ex parte, 17 Jur. 988 . . . . .	211
Cobham v. Dalton, 10 Ch. 655 ; 44 L. J. Ch. 702 ; 23 W. R. 865 . . . . .	278
Cock v. Goodfellow, 10 Mod. 496 . . . . .	137
Cockburn v. Peel, 3 D. F. & J. 170 ; 9 W. R. 725 ; 30 L. J. Ch. 575 ; 4 L. T. N. S. 571 . . . . .	135
Cocker v. Quayle, 1 R. & My. 535 . . . . .	137, 138, 334, 335
Cockerell v. Cholmeley, 1 R. & My. 418 . . . . .	118
Codrington v. Foley, 6 Ves. 364 . . . . .	162, 163
Coe, Re, 4 K. & J. 199 ; 4 Jur. N. S. 158 . . . . .	175, 177
Cogan v. Duffield, 20 Eq. 789 ; 2 Ch. D. 44 ; 45 L. J. Ch. 307 ; 34 L. T. N. S. 593 ; 24 W. R. 905 . . . . .	46
Cohen v. Waley, 9 W. R. 137 ; 3 L. T. N. S. 436 . . . . .	135
Cole v. Coles, 6 Ha. 517 . . . . .	116
— v. Hawes, 4 Ch. D. 238 ; 46 L. J. Ch. 488 ; 25 W. R. 95 . . . . .	54, 55, 56
— v. Muddle, 10 Hare, 186 . . . . .	335
— v. Sewell, 4 Dr. & W. 1 . . . . .	117
— v. Wade, 16 Ves. 27 . . . . .	20, 138, 214
Colegrave v. Manby, 2 Russ. 238 . . . . .	150



	PAGE
Coles v. Trecothick, 9 Ves. 234 . . . . .	182
Collett v. Collett, 35 Bea. 312 . . . . .	104
Colley, Re, 1 Eq. 496 . . . . .	165
Collier v. Walters, 17 Eq. 252; 43 L. J. Ch. 338; 22 W. R. 209; 29 L. T. N. S. 868 . . . . .	4, 5, 6, 7
Collingwood v. Stanhope, L. R. 4 H. L. 43; 38 L. J. Ch. 421; 17 W. R. 537 . . . . .	157, 158, 161
Collins v. Carey, 2 Bea. 128 . . . . .	197
— v. Collins, 2 M. & K. 703 . . . . .	94
Collinson v. Lister, 20 Bea. 356; 4 W. R. 133; 25 L. J. Ch. 38; 26 L. T. N. S. 132; 20 Jur. N. S. 75 . . . . .	90
— Re, 3 D. M. & G. 409 . . . . .	216
Collis v. Collis, 2 Sim. 365 . . . . .	275
Colman v. Sarrel, 1 Ves. Jun. 50 . . . . .	32
Colmore v. Tyndall, 2 Y. & J. 605 . . . . .	9
Colne Valley Railway, Ex parte, 1 D. F. & J. 53 . . . . .	133
Colyer v. Finch, 5 H. L. C. 905 . . . . .	128, 129, 295
Commissioners of Works v. Harby, 23 Bea. 508 . . . . .	292
Compton v. Oxenden, 2 Ves. Jun. 261 . . . . .	168
Congregational Church, Re, W. N. 1866, 196 . . . . .	15
Coningham v. Melhuish, Pr. Ch. 31 . . . . .	59
— v. Plunkett, 2 Y. & C. C. C. 245 . . . . .	34
Conolly v. Parsons, 3 Ves. 625 . . . . .	111
Consterdine v. Consterdine, 31 Bea. 330; 31 L. J. Ch. 807; 10 W. R. 727 . . . . .	100, 139
Conway v. Conway, 3 B. C. C. 267 . . . . .	166
Consolidated Investment Co. v. Riley, 1 Giff. 371 . . . . .	291
Cook v. Addison, 7 Eq. 466; 38 L. J. Ch. 322; 20 L. T. N. S. 212; 17 W. R. 480 . . . . .	99, 301
— v. Collingridge, Jac. 607 . . . . .	286, 287
— v. Dawson, 3 D. F. & J. 127; 30 L. J. Ch. 359; 4 L. T. N. S. 226; 9 W. R. 434 . . . . .	128
— v. Duckinfield, 2 Atk. 566 . . . . .	59
— v. Hutchinson, 1 Keen, 42 . . . . .	58, 59
— Re, W. N. 1873; 49 . . . . .	110
— Re, 12 Eq. 12; 40 L. J. Ch. 400; 24 L. T. N. S. 413; 19 W. R. 693 . . . . .	134
Cooke v. Blake, 1 Exch. 220; 17 L. J. Ex. 370 . . . . .	8
— v. Crawford, 13 Sim. 91; 11 L. J. Ch. 406 . . . . .	12, 23, 24
— Ex parte, 4 Ch. D. 123; 46 L. J. Bk. 52; 35 L. T. N. S. 649; 25 W. R. 171 . . . . .	300, 301
— v. Fuller, 26 Bea. 99 . . . . .	268
— Re, 6 Ir. Ch. R. 430 . . . . .	68
— Re, 4 Ch. D. 454 . . . . .	116, 119

	PAGE
Cookney v. Anderson, 31 Bea. 452 ; 1 D. J. & Sm. 365 ; 32 L. J. Ch. 427 ; 8 Jur. N. S. 1220 . . . . .	246
Cookson v. Lee, 23 L. J. Ch. 473 . . . . .	120
Coombes v. Brookes, 12 Eq. 61 ; 19 W. R. 1002 ; 25 L. T. N. S. 198 . . . . .	210
Coomer v. Bromley, 5 D. G. & Sm. 532 . . . . .	19
Coope v. Carter, 2 D. M. & G. 292 . . . . .	328
Cooper & Allen, Re, 5 Ch. D. 802 ; 46 L. J. Ch. 133 ; 35 L. T. N. S. 890 ; 25 W. R. 301 . . . . .	117, 118
— v. Kynock, 7 Ch. 398 ; 41 L. J. Ch. 299 ; 20 W. R. 503 ; 26 L. T. N. S. 566 . . . . .	9
— v. Macdonald, 16 Eq. 258 . . . . .	170
— v. — 35 Bea. 504' . . . . .	214
— v. — 7 Ch. D. 288 ; 47 L. J. Ch. 373 ; 38 L. T. N. S. 195 ; 26 W. R. 377. . . . .	258, 271
— v. Wells, 11 Jur. N. S. 923 . . . . .	256
Cooth v. Jackson, 6 Ves. 39 . . . . .	68
Cope v. De La Warr, 8 Ch. 982 ; 29 L. T. N. S. 565 ; 22 W. R. 8 . . . . .	49
Copeland, Ex parte, 2 D. M. & G. 914 . . . . .	139
Copeman v. Gallant, 1 P. W. 314 . . . . .	218
Coppard v. Allen, 2 D. J. & Sm. 173 ; 33 L. J. Ch. 475 ; 10 Jur. N. S. 622 . . . . .	331, 332
Coppin v. Coppin, 2 P. W. 295 . . . . .	39
— v. Fernyhough, 2 B. C. C. 291 . . . . .	78
— v. Gray, 1 Y. & C. C. C. 205 . . . . .	316
Corbet v. Corbet, I. R. 7 Eq. 456 . . . . .	52
Corbett v. Maidwell, 1 Salk. 159 ; 2 Vern. 640 . . . . .	163, 167
Corbyn v. French, Tudor R. P. Cases, 456 . . . . .	86
Cordal's case, Cro. Eliz. 316 . . . . .	7
Cordwell v. Mackrill, Amb. 515 ; 2 Ed. 344 . . . . .	47, 299
Corrie v. Byrom, Hill on Trustees, 610 . . . . .	213
Corser v. Cartwright, L. R. 7 H. L. 731 ; 45 L. J. Ch. 605 . . . . .	126, 128, 129, 130, 298
Cosser v. Radford, 1 D. J. & Sm. 585 . . . . .	37
Costabadie v. Costabadie, 6 Ha. 414 . . . . .	174
Costeker v. Horrox, 3 Y. & C. Ex. 530 . . . . .	275
Cothay v. Sydenham, 2 B. C. C. 391 . . . . .	233
Cottam v. Eastern Counties Ry. Co., 1 J. & H. 243 ; 30 L. J. Ch. 217 ; 3 L. T. N. S. 465 ; 6 Jur. N. S. 1367 ; 9 W. R. 94 . . . . .	204
Cotteen v. Missing, 1 Mad. 176 . . . . .	31
Cotton, Re, 1 Ch. D. 232 ; 45 L. J. Ch. 201 ; 33 L. T. N. S. 720 ; 24 W. R. 243 . . . . .	172
Cottrell v. Cottrell, 2 Eq. 330 . . . . .	121
Coulson, Re, W. N. 1867, 233 . . . . .	15

## TABLE OF CASES.

XXXV

	PAGE
Course <i>v.</i> Humphrey, 26 Bea. 402 ; 28 L. J. Ch. 327 ; 5 Jur. N. S. 615 ; 32 L. T. 329 . . . . .	16
Court <i>v.</i> Robarts, 6 Cl. & F. 65 . . . . .	287
Courtenay <i>v.</i> Courtenay, 3 J. & L. 519 . . . . .	205, 207
Courtney <i>v.</i> Taylor, 7 Scott, N. R. 749 ; 6 Man. & Gr. 851 . . . . .	333
Coventry, Mayor of, <i>v.</i> Attorney-General, 7 B. P. C. 235 . . . . .	216
Cowell <i>v.</i> Gatcombe, 27 Bea. 568 . . . . .	239
Cowley <i>v.</i> Wellesley, 35 Bea. 637 . . . . .	107
Cowper <i>v.</i> Scott, 3 P. W. 119 . . . . .	160
Cox <i>v.</i> Barker, 3 Ch. D. 370 ; 35 L. T. N. S. 685 . . . . .	234
— <i>v.</i> Cox, 8 Eq. 343 ; 38 L. J. Ch. 569 . . . . .	92
— <i>v.</i> — 1 K. & J. 251 . . . . .	125
— <i>v.</i> Dolman, 2 D. M. & G. 592 ; 22 L. J. Ch. 427 ; 20 L. T. N. S. 171 ; 1 W. R. 93 . . . . .	314
— <i>Ex parte</i> , 1 Ch. D. 302 ; 33 L. T. N. S. 757 ; 24 W. R. 302 . . . . .	218
— <i>v.</i> Lyne, Younge, 562 . . . . .	254
— <i>v.</i> Parker, 22 Bea. 168 ; 25 L. J. Ch. 873 ; 2 Jur. N. S. 842 ; 4 W. R. 453 ; 27 L. T. N. S. 179 . . . . .	3, 243
Coxwell <i>v.</i> Frankliniski, 11 L. T. N. S. 153 ; 12 W. R. 1072 . . . . .	87
Crabtree <i>v.</i> Poole, 12 Eq. 13 ; 40 L. J. Ch. 468 ; 24 L. T. N. S. 895 . . . . .	296
Crackelt <i>v.</i> Bethune, 1 J. & W. 586 . . . . .	283, 285
Cradock <i>v.</i> Piper, 1 Macn. & G. 664 . . . . .	197
Cragg <i>v.</i> Taylor, L. R. 1 Ex. 148 ; L. R. 2 Ex. 131 ; 25 L. J. Ex. 92 ; 36 L. J. Ex. 63 ; 13 L. T. N. S. 756 ; 14 W. R. 392 ; 12 Jur. N. S. 320 . . . . .	140
Craig <i>v.</i> Wheeler, 29 L. J. Ch. 374 ; 8 W. R. 172 . . . . .	91, 92
Crallan <i>v.</i> Oulton, 3 Bea. 1 . . . . .	39
Cranley <i>v.</i> Dixon, 23 Bea. 512 . . . . .	97
Cranstown <i>v.</i> Johnstone, 3 Ves. 170 . . . . .	244, 294
Craven, <i>Ex parte</i> , 17 L. J. Ch. 215 . . . . .	147
Crawley <i>v.</i> Crawley, 7 Sim. 427 . . . . .	97
Crawshay <i>v.</i> Collins, 1 J. & W. 267 . . . . .	287
— <i>v.</i> Maule, 1 Swans. 508 . . . . .	70
Creagh <i>v.</i> Wilson, 2 Vern. 572 . . . . .	162
Creaton <i>v.</i> Creaton, 3 Sm. & G. 386 ; 26 L. J. Ch. 266 ; 5 W. R. 125 ; 2 Jur. N. S. 1223 . . . . .	2, 3, 7
Cresswell <i>v.</i> Dewell, 4 Giff. 460 . . . . .	334
Creuze <i>v.</i> Hunter, 2 Ves. Jun. 157 . . . . .	284
Crewe <i>v.</i> Dicken, 4 Ves. 97 . . . . .	10
Crickett <i>v.</i> Dolby, 3 Ves. 13 . . . . .	172
Crockett <i>v.</i> Crockett, 2 Ph. 553 . . . . .	57
Croker, Re, W. N. 1877, 38 . . . . .	106
Crompton <i>v.</i> Melbourne, 5 Sim. 353 . . . . .	121

	PAGE
Cropton <i>v.</i> Davies, L. R. 4 C. P. 159 ; 38 L. J. Ch. 159 ; 17 W. R. 444 ; 20 L. T. N. S. 30 . . . . .	5
Crosbie <i>v.</i> McDoual, 13 Ves. 148 . . . . .	62
Croskill <i>v.</i> Bower, 32 Bea. 86 ; 11 W. R. 41 ; 1 N. R. 379 ; 9 Jur. N. S. 267 ; 8 L. T. N. S. 135 . . . . .	198
Crosse, Re, 32 L. J. Ch. 344 ; 8 L. T. N. S. 299 ; 9 Jur. N. S. 429 ; 11 W. R. 396 . . . . .	161
Crossley <i>v.</i> City of Glasgow Life Office, 4 Ch. D. 421 ; 46 L. J. Ch. 65 ; 36 L. T. N. S. 285 ; 25 W. R. 264 . . . . .	284
— <i>v.</i> Crowther, 9 Ha. 384 . . . . .	279
Croughton, Re, 8 Ch. D. 460 ; 38 L. T. N. S. 447 ; 2 W. R. 574 . . . . .	268
Crowe <i>v.</i> Ballard, 3 B. C. C. 117 . . . . .	193, 194
— <i>v.</i> Crisford, 17 Bea. 507 ; 2 W. R. 45 . . . . .	92
Crowther <i>v.</i> Crowther, 23 Bea. 305 ; 5 W. R. 238 ; 28 L. T. N. S. 315 . . . . .	311
Cruikshank <i>v.</i> Duffin, 13 Eq. 555 ; 41 L. J. Ch. 317 ; 26 L. T. N. S. 121 ; 20 W. R. 354 . . . . .	123
Crump <i>v.</i> Baker, 18 Ves. 284 . . . . .	201
Cruwys <i>v.</i> Coleman, 9 Ves. 319 . . . . .	56
Cuff <i>v.</i> Hall, 19 Jur. N. S. 972 . . . . .	116
Cull, Re, 20 Eq. 561 ; 44 L. J. Ch. 664 ; 23 W. R. 850 ; 32 L. T. N. S. 853 . . . . .	232, 233
Cullen <i>v.</i> Attorney-General for Ireland, L. R. 1 H. L. 190 ; 14 L. T. N. S. 644 ; 12 Jur. N. S. 53 ; 14 W. R. 869 . . . . .	82
Culpepper <i>v.</i> Aston, 2 Ch. Ca. 115, 223 . . . . .	58, 127
Cunliffe <i>v.</i> Brancker, 3 Ch. D. 393 ; 46 L. J. Ch. 123 ; 35 L. T. N. S. 578 . . . . .	6
— <i>v.</i> Cunliffe, Amb. 686 . . . . .	57
Cunynghame, Re, 11 Eq. 324 ; 40 L. J. Ch. 247 ; 24 L. T. N. S. 124 ; 19 W. R. 381 . . . . .	267
Curnick <i>v.</i> Tucker, 17 Eq. 320 . . . . .	53, 57
Current <i>v.</i> Jago, 1 Coll. 261 . . . . .	61, 65
Currie <i>v.</i> Larkins, 12 W. R. 515 . . . . .	161
Curteis <i>v.</i> Candler, 6 Mad. 123 . . . . .	230
— Re, 14 Eq. 217 ; 41 L. J. Ch. 631 . . . . .	64
Curtis <i>v.</i> Lukin, 5 Bea. 147 . . . . .	152
— <i>v.</i> Price, 12 Ves. 89 . . . . .	9
— Re, I. R. 5 Eq. 429 . . . . .	212
Cutbush <i>v.</i> Cutbush, 1 Bea. 184 . . . . .	90
Cutts <i>v.</i> Salmon, 4 D. G. & Sm. 125 . . . . .	190
Dacre <i>v.</i> Patrickson, 1 Dr. & Sm. 182 ; 8 W. R. 597 ; 2 L. T. N. S. 500 . . . . .	244

	PAGE
D'Adhemar v. Bertrand, 35 Bea. 19 . . . . .	203, 211, 213
D'Aglie v. Fryer, 12 Sim. 1 . . . . .	94
Daking v. Whimper, 26 Bea. 568 . . . . .	36
Dale v. Hamilton, 5 Ha. 369 . . . . .	70
Daly v. Beckett, 24 Bea. 114 . . . . .	94
— v. French, 6 B. P. C. 55 . . . . .	164, 166
Dance v. Goldingham, 8 Ch. 902; 42 L. J. Ch. 777; 29 L. T. N. S. 160 . . . . .	113, 118, 280
Dane, Re, 1. R. 5 Eq. 499 . . . . .	75, 309
Daniel v. Adams, Amb. 495 . . . . .	111
— v. Freeman, 1. R. 8 Eq. 233 . . . . .	291
— v. Warren, 2 Y. & C. C. C. 290 . . . . .	93
Darby v. Darby, 3 Drew, 495 . . . . .	70
D'Arcy v. Blake, 2 Sch. & L. 387 . . . . .	269, 270
Darcy v. Croft, 9 L. Ch. R. 19 . . . . .	257
Darke v. Martyn, 1 Bea. 525 . . . . .	99, 137
— v. Williamson, 25 Bea. 622; 6 W. R. 824 . . . . .	102
Darkin v. Darkin, 17 Bea. 578; 2 W. R. 135; 22 L. T. N. S. 278 249, 252	
Darley v. Darley, 3 Atk. 399 . . . . .	248
Dashwood v. Bulkeley, 10 Ves. 230 . . . . .	104
Davenport v. Davenport, 1 H. & M. 779 . . . . .	49
— v. Stafford, 14 Bea. 331 . . . . .	240
Davey v. Durrant, 1 D. & J. 535; 26 L. J. Ch. 830 . . . . .	121, 192
— v. Ward, 7 Ch. D. 754 . . . . .	174, 179
Davie v. Hooper, 6 B. P. C. 51 . . . . .	169
Davies v. Austin, 1 Ves. Jun. 247 . . . . .	176
— v. Davies, 2 D. M. & G. 53 . . . . .	176
— v. Hodgson, 25 Bea. 177; 6 W. R. 355; 27 L. J. Ch. 449; 4 Jur. N. S. 252; 31 L. T. 49 . . . . .	231, 268
— v. Huguenin, 1 H. & M. 730; 11 W. R. 1040; 32 L. J. Ch. 417; 2 N. R. 101; 8 L. T. N. S. 443 . . . . .	158
— v. Jenkins, 6 Ch. D. 728; 26 W. R. 260 . . . . .	261, 262, 264
— v. Nicolson, 2 D. & J. 693 . . . . .	329
— v. Otty, 35 Bea. 208 . . . . .	26, 85
— v. Wescomb, 2 Sim. 425 . . . . .	118
Davis v. Chambers, 7 D. M. & G. 386 . . . . .	122
— v. Dendy, 3 Mad. 170 . . . . .	197, 202
— v. Dysart, 20 Bea. 414; 3 W. R. 393; 24 L. J. Ch. 381; 25 L. T. 91; 3 Eq. Rep. 599 . . . . .	227
— Ex parte, 2 Y. & C. C. C. 468 . . . . .	212
— v. Frowd, 1 M. & K. 200 . . . . .	231
— v. Marlborough, 2 Swans. 118 . . . . .	274
— Re, 12 Eq. 214; 40 L. J. Ch. 566; 19 W. R. 944 . . . . .	204, 210, 211

	PAGE
Davis v. Spurling, 1 R. & M. 64 . . . . .	18, 19
Davison v. Atkinson, 5 I. R. 434 . . . . .	248
Dawkins v. Penrhyn, 6 Ch. D. 318 ; 36 L. T. N. S. 680 . . . . .	54, 316
Dawson v. Bourne, 16 Bea. 29 . . . . .	255
— v. Clarke, 15 Ves. 409 ; 18 Ves. 254 . . . . .	59, 237
— v. Massey, 1 B. & B. 219 . . . . .	189
— v. Oliver-Massey, 2 Ch. D. 758 ; 45 L. J. Ch. 519 ; 24 W. R. 993 . . . . .	104
— v. Prince, 2 D. & J. 41 ; 6 W. R. 171 ; 27 L. J. Ch. 169 ; 4 Jur. N. S. 497 ; 30 L. T. 237 . . . . .	259
— v. Whitehaven, Bank of, 6 Ch. D. 218 ; 46 L. J. Ch. 545 ; 36 L. T. N. S. 310 ; 25 W. R. 582 . . . . .	269, 270
Day v. Freund, W. N. 1876, 266 . . . . .	265
— v. Radcliffe, 3 Ch. D. 654 ; 24 W. R. 961 . . . . .	160, 161
Deacon v. Colquhoun, 2 Drew. 21 ; 2 W. R. 67 ; 23 L. J. Ch. 16 ; 2 Eq. Rep. 319 . . . . .	66, 68
— v. Smith, 3 Atk. 323 . . . . .	305
Dearle v. Hall, 6 Russ. 1 . . . . .	289
De Bussche v. Alt, 8 Ch. D. 286 ; 47 L. J. Ch. 381 ; 38 L. T. N. S. 370 . . . . .	187
Deeth v. Hale, 2 Moll. 317 . . . . .	114
De Grey v. Richardson, 3 Atk. 469 . . . . .	271
De Havilland v. De Saumarez, 14 W. R. 118 . . . . .	46
Delane v. Delane, 7 B. P. C. 279 . . . . .	69
Delves v. Delves, 20 Eq. 77 ; 23 W. R. 499 . . . . .	185
Dening v. Ware, 22 Bea. 184 ; 4 W. R. 523 . . . . .	30, 31
Dennis, Re, 12 W. R. 575 . . . . .	209, 215
Dent v. Dent, 30 Bea. 363 . . . . .	107
Denton v. Davies, 18 Ves. 499 . . . . .	68
— v. Davy, 1 Moore, P. C. C. 15 . . . . .	199
— v. Denton, 7 Bea. 388 . . . . .	222, 226
— v. Donner, 23 Bea. 285 . . . . .	184, 189
Derbshire v. Home, 3 D. M. & G. 80 . . . . .	268
Devaynes v. Noble, 1 Mer. 563 . . . . .	326
— v. Robinson, 24 Bea. 86 ; 5 W. R. 509 ; 29 L. T. N. S. 244 ; 3 Jur. N. S. 707 . . . . .	122, 123, 129, 329
Devey v. Peace, Tam. 77 . . . . .	213
— v. Thornton, 9 Ha. 232 . . . . .	232
De Visme, Re, 2 D. J. & Sm. 17 ; 33 L. J. Ch. 332 ; 12 W. R. 140 ; 10 L. T. N. S. 668 . . . . .	65
Devoy v. Devoy, 3 Sm. & G. 403 ; 5 W. R. 222 ; 26 L. J. Ch. 290 ; 28 L. T. N. S. 336 ; 3 Jur. N. S. 79 . . . . .	66
Dewell, Re, 4 Dr. 269 . . . . .	244
De Witte v. Palin, 14 Eq. 251 ; 26 L. T. N. S. 825 . . . . .	176

	PAGE
D'Eyncourt v. Gregory, 3 Ch. D. 635 ; 45 L. J. Ch. 205 ; 24 W. R. 424 . . . . .	103
Dibbs v. Goren, 11 Bea. 483 . . . . .	231
Dicconson v. Talbot, 6 Ch. 32 . . . . .	189
Dickenson v. Teasdale, 1 D. J. & Sm. 52 ; 32 L. J. Ch. 37 ; 1 N. R. 141 ; 9 Jur. N. S. 60, 237 ; 7 L. T. N. S. 655 . . . . .	311, 316
Dickinson v. Mort, 8 Ha. 78 . . . . .	267
— Re, 1 Jur. N. S. 724 . . . . .	213
Dickson, Re, 12 Eq. 154 ; 40 L. J. Ch. 707 . . . . .	333
Dilkes v. Broadmead, 2 D. F. & J. 566 ; 30 L. J. Ch. 268 ; 7 Jur. N. S. 56 . . . . .	330
Dillon v. Coppin, 4 M. & Cr. 647 . . . . .	29, 30, 35
— v. Harris, 4 Bligh, N. R. 321 . . . . .	104
Dillwyn v. Llewelyn, 4 D. F. & J. 517 ; 10 W. R. 742 . . . . .	30
Dimes v. Scott, 4 Russ. 195 . . . . .	96, 132, 327
Dipple v. Corles, 11 Ha. 183 . . . . .	33
Dix v. Burford, 19 Bea. 409 . . . . .	13, 238, 239
Dixon v. Dixon, 1 Bea. 40 . . . . .	266
— v. Olmius, 1 Cox, 414 ; 2 Cox, 414 . . . . .	80, 256
— Re, 21 W. R. 220 . . . . .	211
— v. Saville, 1 B. C. C. 326 . . . . .	269
Dobson v. Land, 8 Ha. 216 . . . . .	100, 186
Docker v. Somes, 2 M. & K. 655 . . . . .	286
Dodds v. Hills, 2 H. & M. 424 . . . . .	299
Dodkin v. Brunt, 6 Eq. 580 . . . . .	204
Doe v. Barthrop, 5 Taunt. 382 . . . . .	1
— v. Bennett, 6 Exch. 892 . . . . .	22
— v. Biggs, 2 Taunt. 109 . . . . .	2
— v. Bolton, 11 A. & E. 188 ; 3 Per. & D. 135 . . . . .	2, 6, 8
— v. Cafe, 7 Exch. 675 ; 21 L. J. Ex. 219 . . . . .	7, 8
— v. Davies, 1 Q. B. 438 ; 1 G. & D. 33 ; 10 L. J. Q. B. 169 . . . . .	5
— v. Edlin, 4 A. & E. 582 ; 5 L. J. (K. B.) 137 . . . . .	6
— v. Ewart, 7 A. & E. 636 ; 3 N. & P. 197 ; 7 L. J. Q. B. 177 . . . . .	2, 5, 6
— v. Hallett, 1 M. & S. 124 . . . . .	159
— v. Harris, 16 M. & W. 517 ; 16 L. J. Ex. 190 . . . . .	10, 13
— v. Hicks, 7 T. R. 433 . . . . .	8
— v. Homfray, 6 A. & E. 206 ; 1 N. & P. 401 ; L. J. (K. B.) 132 . . . . .	3
— v. Hopkins, 9 East, 70 . . . . .	36
— v. Ironmonger, 3 East, 533 . . . . .	8
— v. King, 6 Exch. 791 . . . . .	69
— v. Lightfoot, 8 M. & W. 553 . . . . .	21
— v. Manning, 9 East, 59 . . . . .	35
— v. Nepean, 5 B. & Ad. 86 ; 2 M. & W. 894 . . . . .	235
— v. Nicholls, 1 B. & C. 336 ; 1 L. J. (K. B.) 124 . . . . .	1, 8

	PAGE
<i>Doc v. Pratt</i> , 6 A. & E. 180; 6 L. J. (K. B.) 101 . . . . .	7
— <i>v. Roe</i> , 1 Anst. 86 . . . . .	213
— <i>v. Rusham</i> , 17 Q. B. 723 . . . . .	35
— <i>v. Simpson</i> , 5 East, 162 . . . . .	7
— <i>v. Walbank</i> , 2 B. & Ad. 554 . . . . .	6
— <i>v. Willan</i> , 2 B. & Ald. 84 . . . . .	6
— <i>v. Woodhouse</i> , 4 T. R. 89 . . . . .	7
<i>Dolder v. Bank of England</i> , 10 Ves. 352 . . . . .	276
<i>Dolphin v. Aylward</i> , L. R. 4 H. L. 486 . . . . .	36
<i>Dolton v. Hewer</i> , 6 Mad. 9 . . . . .	126
<i>Domville v. Solly</i> , 2 Russ. 372 . . . . .	276
<i>Donaldson v. Donaldson</i> , 3 Ch. D. 743; 34 L. T. N. S. 900; 24 W. R. 1137. . . . .	105
— <i>v. — Kay</i> , 711; 2 W. R. 691 . . . . .	288
<i>Doncaster v. Doncaster</i> , 3 K. & J. 26; 2 Jur. N. S. 1066 . . . .	47
<i>Donisthorpe v. Porter</i> , 2 Ed. 162 . . . . .	168
— <i>Re</i> , 10 Ch. 55; 44 L. J. Ch. 536; 31 L. T. N. S. 369; 23 W. R. 100 . . . . .	40
<i>Donne v. Hart</i> , 2 R. & M. 360 . . . . .	258
<i>Donovan v. Needham</i> , 9 Bea. 164 . . . . .	172
<i>Doran v. Wiltshire</i> , 3 Swans. 699 . . . . .	125
<i>Dorin v. Dorin</i> , L. R. 7 H. L. 568 . . . . .	83
<i>Dormer v. Dormer</i> , Finch. 433 . . . . .	160
— <i>v. Fortescue</i> , 3 Atk. 124 . . . . .	323
<i>Dornford v. Dornford</i> , 12 Ves. 127 . . . . .	219, 330
<i>Doss v. Secretary of State for India</i> , 19 Eq. 509 . . . . .	245
<i>Doughty v. Bull</i> , 2 P. W. 319 . . . . .	160
<i>Douglas v. Andrews</i> , 12 Bea. 310 . . . . .	174
— <i>v. Archbutt</i> , 2 D. & J. 148; 27 L. J. Ch. 271; 4 Jur. N. S. 315; 6 W. R. 306; 31 L. T. 4 . . . . .	196, 199
<i>Dover v. Buck</i> , 5 Giff. 57 . . . . .	183
— <i>Ex parte</i> , 5 Sim. 500 . . . . .	13
<i>Dowling v. Dowling</i> , 1 Ch. 613; 12 Jur. 720; 14 W. R. 1003 . .	234
— <i>v. Hudson</i> , 17 Bea. 248 . . . . .	126
<i>Downes v. Grazebrook</i> , 3 Mer. 200 . . . . .	111, 184, 186, 310
<i>Doyle v. Blake</i> , 2 Sch. & L. 239 . . . . .	14, 18, 232
<i>D'Oyley v. Attorney-General</i> , 4 Vin. Ab. 486 . . . . .	103
<i>Drake v. Trefusis</i> , 10 Ch. 364; 33 L. T. N. S. 85; 23 W. R. 762 .	105
— <i>v. Whitmore</i> , 5 D. G. & Sm. 619 . . . . .	124
<i>Drakeford v. Wilks</i> , 3 Atk. 539 . . . . .	79
<i>Drever v. Mawdesley</i> , 16 Sim. 511 . . . . .	40
<i>Drew v. Martin</i> , 2 H. & M. 130; 12 W. R. 547; 33 L. J. Ch. 367; 3 N. R. 637; 10 Jur. N. S. 366; 10 L. T. N. S. 291 . . . .	62
<i>Drewe, Re</i> , W. N. 1876, 168 . . . . .	212



	PAGE
Drewett v. Pollard, 27 Bea. 196 . . . . .	156
Drosier v. Brereton, 15 Bea. 222 . . . . .	142, 238, 241
Drummond, Re, 2 Giff. 189 . . . . .	140
— v. Sant, L. R. 6 Q. B. 763 . . . . .	315
— v. Tracy, Johns. 608 . . . . .	129
Drury v. Scott, 4 Y. & C. 264 . . . . .	251
Dubless v. Flint, 4 M. & Cr. 502 . . . . .	276
Dubois, Ex parte, 1 Cox, 310 . . . . .	16
Dubost, Ex parte, 18 Ves. 149 . . . . .	30
Duffield v. Smith, 2 Vern. 258 . . . . .	169
Dugdale v. Meadows, 6 Ch. 501; 40 L. J. Ch. 140; 24 L. T. N. S. 113 . . . . .	121
Du Hourmelin v. Sheldon, 2 W. R. 639 . . . . .	244
Duke v. Doidge, 2 Ves. Sen. 203, n. . . . .	157, 159
Dummer v. Pitcher, 2 M. & K. 262 . . . . .	64
Dumper v. Dumper, 3 Giff. 583; 8 Jur. N. S. 583; 6 L. T. N. S. 315 . . . . .	66
Dunbar v. Tredennick, 2 B. & B. 304 . . . . .	192, 193, 194, 294
Duncan v. Bluett, 4 I. R. Eq. 469 . . . . .	47
— v. Cashin, L. R. 10 C. P. 554; 44 L. J. Eq. 225; 32 L. T. N. S. 497; 22 W. R. 561 . . . . .	252
Dunch v. Kent, 1 Vern. 260 . . . . .	37
Duncombe v. Nelson, 9 Bea. 211 . . . . .	175
Dunnage v. White, 1 J. & W. 583 . . . . .	59, 60
Dunne v. Doran, 13 Ir. Eq. 545 . . . . .	314
— v. Dunne, 3 Sm. & G. 22; 7 D. M. & G. 207 . . . . .	107
— v. English, 18 Eq. 524 . . . . .	186, 187, 274, 275
Dunnill, Re, 1 R. 6 Eq. 322 . . . . .	49
Dyer v. Dyer, 2 Cox, 92 . . . . .	61, 62, 66, 67
EADE v. Eade, 5 Mad. 118 . . . . .	53, 55
Eager v. Barnes, 31 Bea. 579; 7 L. T. N. S. 408 . . . . .	325
Eales v. England, Pr. Ch. 200; 2 Ver. 467 . . . . .	52
East v. East, 5 Ha. 348 . . . . .	88
— Re, 8 Ch. 735; 42 L. J. Ch. 480 . . . . .	211
East India Co. v. Donald, 9 Ves. 275 . . . . .	294
Eaton v. Watts, 4 Eq. 151; 16 L. T. N. S. 311 . . . . .	53, 54, 55
Eaves v. Hickson, 30 Bea. 136; 10 W. R. 29; 7 Jur. N. S. 1297; 5 L. T. N. S. 598 . . . . .	231, 235, 337
Ebrand v. Dancer, 1 Coll. 265, n. . . . .	65
Edgeworth v. Edgeworth, Beatt. 328 . . . . .	160
Edmonds v. Peake, 7 Bea. 239 . . . . .	100
Edwards v. Abrey, 2 Ph. 37 . . . . .	249
— v. Fashion, Prec. Ch. 332 . . . . .	69

	PAGE
Edwards v. Grove, 2 D. F. & J. 221; 29 L. J. Ch. 839; 2 L. T. N. S. 620 . . . . .	176
— v. Harvey, G. Cooper, 40 . . . . .	122
— v. Jones, 1 M. & Cr. 226 . . . . .	29
— v. Jones, 14 W. R. 815 . . . . .	255
— v. Lewis, 3 Atk. 538 . . . . .	77
— v. Martin, 1 Eq. 121; 35 L. J. 187; 13 L. T. N. S. 236; 14 W. R. 25 . . . . .	290
— v. Meyrick, 2 Ha. 60 . . . . .	189, 190
— v. Pike, Ed. 267 . . . . .	80
— v. Tuck, 3 D. M. & G. 40; 1 W. R. 248; 22 L. J. Ch. 523; 21 L. T. 83 . . . . .	156
— v. Warden, L. R. 1 App. C. 281; 45 L. J. Ch. 713 . . . . .	308
— v. Williams, 32 L. J. Ch. 763 . . . . .	190
Egbert v. Butter, 21 Bea. 560 . . . . .	220, 240, 336
Egerton v. Brownlow, 4 H. L. C. 1 . . . . .	44, 47
Eidsforth v. Armstead, 2 K. & J. 333; 4 W. R. 279; 25 L. J. Ch. 237; 26 L. T. N. S. 323 . . . . .	128
Eisdell v. Hammersley, 31 Bea. 255; 6 L. T. N. S. 706 . . . . .	119
Eland v. Eland, 1 Bea. 235; 4 M. & Cr. 429 . . . . .	126
Eldridge v. Knott, Cowp. 214 . . . . .	317
Elcock v. Mapp, 3 H. L. C. 492 . . . . .	243
Elliot v. Brown, 3 Swans. 489 . . . . .	70
— v. Elliot, 2 Ch. Ca. 231 . . . . .	63
— v. Merryman, 1 W. & T. L. C. 64 . . . . .	126, 127, 128
Elliott v. Minto, 6 Mad. 16 . . . . .	245
Ellis v. Eden, 23 Bea. 543 . . . . .	139
— v. Ellis, 23 W. R. 382 . . . . .	55
— v. Maxwell, 3 Bea. 595; 12 Bea. 104 . . . . .	153, 154
— v. Nimmo, Ll. & G. Sugd. 333 . . . . .	32
— Re, 17 Eq. 409; 43 L. J. Ch. 444; 22 W. R. 448 . . . . .	268
Ellison v. Airey, 1 Ves. Sen. 114 . . . . .	196, 199, 200
— v. Ellison, 6 Ves. 656; 1 W. & T. L. C. Eq. 282 . . . . .	27, 30 35
Ellison, Re, 20 Jur. N. S. 62 . . . . .	10
— v. Thomas, 1 D. J. & Sm. 18; 32 L. J. Ch. 32; 8 Jur. N. S. 1139; 11 W. R. 56; 1 N. R. 37; 7 L. T. N. S. 342 . . . . .	158, 161
Else v. Barnard, 28 Bea. 228 . . . . .	112
Elsebe, The, 5 Rob. 173 . . . . .	242
Elton v. Elton, 27 Bea. 634 . . . . .	146
— v. Sheppard, 1 B. C. C. 532 . . . . .	252
Elwin v. Elwin, 8 Ves. 546 . . . . .	147
Emblyn v. Freeman, Pr. Ch. 541 . . . . .	60
Embrey v. Martin, Amb. 230 . . . . .	160
Emery v. Hill, 1 Russ. 112 . . . . .	246

	PAGE
Emmet v. Clark, 3 Giff. 32; 9 W. R. 515; 30 L. J. Ch. 472; 7 Jur. N. S. 404; 4 L. T. N. S. 319 . . . . .	212
Emperor v. Rolfe, 1 Ves. Sen. 208 . . . . .	161
England v. Tredegar, 35 Bea. 256 . . . . .	237
Englefield v. Englefield, 2 Vern. 236 . . . . .	166
Entwistle v. Markland, 6 Ves. 528 . . . . .	147
Equitable Reversionary Society v. Fuller, 1 J. & H. 379; 30 L. J. Ch. 497; 4 L. T. N. S. 450; 7 Jur. N. S. 307; 9 W. R. 400	133, 135
Ernest v. Croysdill, 2 D. F. & J. 175 . . . . .	322
Espin v. Pemberton, 3 D. & J. 547; 7 W. R. 123, 221; 28 L. J. Ch. 308, 311; 5 Jur. N. S. 55, 157; 32 L. T. 250, 345 . . . . .	290
Essex v. Atkins, 14 Ves. 542 . . . . .	258
Etty v. Bridges, 2 Y. & C. C. C. 486 . . . . .	292
Evans v. Bagwell, 2 C. & L. 612 . . . . .	41
— v. Bear, 10 Ch. 77; 31 L. T. N. S. 625; 23 W. R. 67 . . . . .	277
— v. Bicknell, 6 Ves. 174 . . . . .	227, 294, 319
— v. Carrington, 2 D. F. & J. 481; 30 L. J. Ch. 364; 7 Jur. N. S. 197; 4 L. T. N. S. 65 . . . . .	235
— v. Coventry, 5 D. M. & G. 918 . . . . .	272
— v. Evans, 23 Bea. 1 . . . . .	259
— v. Hellier, 5 Cl. & F. 114 . . . . .	155
— v. Jackson, 8 Sim. 217 . . . . .	124
— v. John, 4 Bea. 36 . . . . .	14
— v. Massey, 1 Y. & J. 196 . . . . .	172, 173
— Re, 30 Bea. 232 . . . . .	108
— v. Scott, 1 H. L. C. 57 . . . . .	160
Evelyn v. Evelyn, 2 P. W. 669 . . . . .	164, 166
Everett v. Prythergch, 12 Sim. 367 . . . . .	273
Every v. Gold, 2 Ch. R. 1 . . . . .	169
Ewens v. Addison, 4 Jur. N. S. 1034 . . . . .	104
Eykyn, Re, 6 Ch. D. 115 . . . . .	64
Eyre v. Dolphin, 2 B. & B. 290 . . . . .	73, 77
— v. Hughes, 2 Ch. D. 148; 45 L. J. Ch. 395; 34 L. T. N. S. 21; 24 W. R. 597 . . . . .	201
— v. Macdonell, 15 Ir. Ch. R. 534 . . . . .	188
— v. Marsden, 2 Keen, 564 . . . . .	155
FAIRCHILD, Ex parte, 1 G. & J. 221 . . . . .	219
Fairer v. Park, 3 Ch. D. 309 . . . . .	169
Falkner v. Equitable Society, 4 Drew. 352; 28 L. J. Ch. 132; 7 W. R. 73; 4 Jur. N. S. 1214; 32 L. T. 181 . . . . .	120
Farington v. Parker, 4 Eq. 116; 16 L. T. N. S. 258; 15 W. R. 685 . . . . .	261

	PAGE
Farley <i>v.</i> Bonham, 2 J. & H. 177; 9 W. R. 299; 30 L. J. Ch. 239; 7 Jur. N. S. 232; 3 L. T. N. S. 806 . . . . .	270
Farmer <i>v.</i> Dean, 32 Bea. 327 . . . . .	112
Farrant <i>v.</i> Blanchford, 1 D. J. & Sm. 119; 11 W. R. 294; 32 L. J. Ch. 237; 9 Jur. N. S. 423; 7 L. T. N. S. 770 . . . . .	318, 334, 336
Farrar <i>v.</i> Barraclough, 2 Sm. & G. 231; 2 W. R. 244 . . . . .	141, 143
Farrow <i>v.</i> Smith, W. N. 1877, 21 . . . . .	254
Fauntleroy, Re, 10 Sim. 252 . . . . .	204
Fawcett <i>v.</i> Whitehouse, 1 R. & M. 132 . . . . .	77, 187
Fazakerley <i>v.</i> Culshaw, 19 W. R. 793 . . . . .	107
— <i>v.</i> Ford, 4 Sim. 390 . . . . .	158
Fearn v. Young, 9 Ves. 549; 10 Ves. 184 . . . . .	94, 97, 201
Featherstonhaugh <i>v.</i> Fenwick, 17 Ves. 298 . . . . .	76
Fellows <i>v.</i> Mitchell, 2 Vern. 516; 1 P. W. 82 . . . . .	99, 239
Fenwick <i>v.</i> Clarke, 31 L. J. Ch. 728; 10 W. R. 636; 6 L. T. N. S. 593 . . . . .	98
— <i>v.</i> Greenwell, 10 Bea. 412 . . . . .	14, 87, 325
Fergus <i>v.</i> Gore, 1 Sc. & L. 109 . . . . .	39
Ferguson <i>v.</i> Ferguson, 10 Ch. 661; 44 L. J. Ch. 615 . . . . .	277
Fermor, Ex parte, Jac. 404 . . . . .	198
Ferraby <i>v.</i> Hobson, 2 Ph. 255 . . . . .	185
Ferrars <i>v.</i> Cherry, 2 Vern. 384 . . . . .	296
Festing <i>v.</i> Allen, 5 Ha. 579 . . . . .	172
Fettiplace <i>v.</i> Gorges, 3 B. C. C. 8 . . . . .	257
Field <i>v.</i> Donoughmore, 1 Dr. & War. 227 . . . . .	37, 38
— <i>v.</i> Evans, 15 Sim. 375 . . . . .	267
— <i>v.</i> Peckett, 29 Bea. 576 . . . . .	90
— <i>v.</i> Sowle, 4 Russ. 112 . . . . .	251, 262, 265
Finch <i>v.</i> Finch, 15 Ves. 43 . . . . .	61, 62
Finlay <i>v.</i> Howard, 2 Dr. & War. 490 . . . . .	213
Finney, Re, 3 Giff. 465 . . . . .	22
Firmin <i>v.</i> Pulham, 2 D. G. & Sm. 99 . . . . .	224
Fisher <i>v.</i> Brierley, 29 L. J. Ch. 477 . . . . .	82
Fitch <i>v.</i> Weber, 6 Ha. 145 . . . . .	59, 60
Fitzgerald <i>v.</i> Burk, 2 Atk. 397 . . . . .	299
— <i>v.</i> Chapman, 1 Ch. D. 563; 45 L. J. Ch. 23; 33 L. T. N. S. 587; 24 W. R. 130 . . . . .	235
— <i>v.</i> Field, 1 Russ. 430 . . . . .	160
— <i>v.</i> Fitzgerald, 6 Ir. Ch. R. 145 . . . . .	143
— <i>v.</i> Pringle, 2 Moll. 534 . . . . .	137
Fitzgibbon <i>v.</i> Scanlan, 1 Dow. 261 . . . . .	73
Fleet <i>v.</i> Perrins, L. R. 3 Q. B. 536; L. R. 4 Q. B. 500; 38 L. J. Q. B. 233; 20 L. T. N. S. 814; 17 W. R. 862 . . . . .	264
Fletcher <i>v.</i> Fletcher, 4 Ha. 67 . . . . .	31, 34, 35, 279

	PAGE
Fletcher v. Green, 33 Bea. 426 . . . . .	284, 327, 330, 331
Flocton v. Bunning, 8 Ch. 323 n. . . . .	286
Floyer v. Bankes, 8 Eq. 115 . . . . .	153
Fluid v. Fluid, 7 L. T. N. S. 590 ; 11 W. R. 250 . . . . .	135
Foley v. Burnell, 1 B. C. C. 274 . . . . .	278
— v. Hill, 2 H. L. C. 28 . . . . .	302, 309
— v. Inland Revenue, Commissioners of, L. R. 3 Ex. 263 . . . . .	215
— v. Parry, 2 M. & K. 138 ; 5 Sim. 138 . . . . .	53, 181
— v. Wontner, 2 J. & W. 248 . . . . .	214
Foligno, Re, 32 Bea. 131 . . . . .	233, 234
Foljambe v. Willoughby, 2 S. & S. 165 . . . . .	167, 177
Follett v. Tyrer, 14 Sim. 125 . . . . .	271
Forbes v. Ball, 3 Mer. 437 . . . . .	52
— v. Forbes, 6 W. R. 92 ; 3 Jur. N. S. 1203 ; 30 L. T. 176 . . . . .	33
— v. Limond, 4 D. M. & G. 315 ; 2 W. R. 70 ; 22 L. T. 153 ; 18 Jur. 33 . . . . .	38
— v. Moffatt, Tudor, R. P. Ca. 837 ; 18 Ves. 391 . . . . .	168
— v. Peacock, 1 Ph. 717 . . . . .	126
— v. Ross, 2 B. C. C. 430 . . . . .	136, 137, 286
— v. Steven, 10 Eq. 178 ; 18 W. R. 508 . . . . .	71
Ford v. Chesterfield, 16 Bea. 516 ; 22 L. J. Ch. 630 ; 1 W. R. 217 ; 20 L. T. N. S. 228 . . . . .	11
— v. Olden, 3 Eq. 463 ; 36 L. J. Ch. 651 ; 15 L. T. N. S. 558 . . . . .	186
— v. Ryan, 4 Ir. Ch. R. 342 . . . . .	126
— v. Tynte, 2 H. & M. 324 . . . . .	170
Forder v. Wade, 3 B. C. C. 520 . . . . .	270
Fordham v. Speight, W. N. 1875, 140 ; 23 W. R. 782 . . . . .	53, 57
Fordyce v. Willis, 3 B. C. C. 577 . . . . .	25, 242
Forrest v. Elwes, 2 Mer. 68 . . . . .	199
— v. Forrest, 13 W. R. 380 . . . . .	65, 66
Forshaw v. Higginson, 8 D. M. & G. 827 ; 20 Bea. 485 ; 5 W. R. 424 ; 26 L. J. Ch. 342 ; 29 L. T. N. S. 43 ; 3 Jur. N. S. 476 . . . . .	89, 101, 120, 205, 206, 207, 215
Forster v. Abraham, 17 Eq. 351 ; 43 L. J. Ch. 199 ; 22 W. R. 386 . . . . .	113, 211
— v. Davies, 4 D. F. & J. 139 ; 31 L. J. Ch. 276 ; 8 Jur. N. S. 65 ; 10 W. R. 180 ; 5 L. T. N. S. 532 . . . . .	216
— v. Hale, 3 Ves. 606 . . . . .	25
— v. Ridley, 4 D. J. & Sm. 452 . . . . .	198
Fortescue v. Barnett, 3 M. & K. 36 . . . . .	28, 31
Foss v. Foss, 15 I. Ch. R. 215 . . . . .	259
Foster v. Cockerell, 3 Cl. & F. 456 ; 9 Bligh, N. R. 332 . . . . .	289, 291
— v. Dawber, 1 Dr. & Sm. 172 ; 8 W. R. 646 . . . . .	10

	PAGE
Foster v. Foster, 2 B. C. C. 616 . . . . .	286
— v. Ley, 2 Bing. N. C. 269 . . . . .	39
— and Lister, Re, 6 Ch. D. 87 ; 46 L. J. Ch. 480 ; 36 L. T. N. S. 582 ; 25 W. R. 553. . . . .	45
— v. Vassall, 3 Atk. 589 . . . . .	244
Fowkes v. Pascoe, 10 Ch. 343 ; 44 L. J. Ch. 367 ; 32 L. T. N. S. 545 ; 33 W. R. 538 . . . . .	65, 66, 68
Fowler v. Reynal, 3 Macn. & G. 500 . . . . .	141, 142
— v. Wyatt, 24 Bea. 232 . . . . .	237
Fox v. Buckley, 3 Ch. D. 511 ; 25 W. R. 107 . . . . .	220, 336
— v. Fox, 27 Bea. 301 . . . . .	53
— v. Mackreth, 2 B. C. C. 400 ; 2 Cox, 320 ; 4 B. P. C. 258 ; 1 Ves. Jun. 69 . . . . .	182, 192, 276
Foy, Re, W. N. 1875, 150 . . . . .	134
Francis v. Grover, 5 Ha. 39 . . . . .	311
Franklin v. Frith, 3 B. C. C. 433 . . . . .	283
— v. Green, 2 Vern. 136 . . . . .	176, 178
Franklyn, Ex parte, 1 D. G. & Sm. 528 . . . . .	131
Franks v. Bollans, 3 Ch. 717 ; 16 W. R. 1158 ; 18 L. T. N. S. 623 . . . . .	184
Fraser v. Palmer, 4 Y. & C. Ex. 515 . . . . .	200
Freake v. Cranefeldt, 3 M. & Cr. 499 . . . . .	39
Freeland v. Pearson, 7 Eq. 246 . . . . .	121
Freeman v. Fairlie, 3 Mer. 29 . . . . .	228, 275
— v. Tatham, 5 Ha. 329 . . . . .	25
Freke v. Carbery, 16 Eq. 461 ; 21 W. R. 835 . . . . .	153
French, Ex parte, 7 Sim. 510 . . . . .	135
— Re, 15 Eq. 68 . . . . .	109, 110
Frith v. Cartland, 2 H. & M. 417 . . . . .	300, 301, 304
— and Osborne, Re, 3 Ch. D. 618 ; 45 L. J. Ch. 780 ; 35 L. T. N. S. 146 ; 24 W. R. 1061 . . . . .	123
Fromow, Re, 8 W. R. 272 . . . . .	123
Fry v. Fry, 27 Bea. 144 ; 28 L. J. Ch. 591 ; 5 Jur. N. S. 1047 ; 34 L. T. N. S. 51 . . . . .	100, 114, 241
Fryer v. Buttar, 8 Sim. 442 . . . . .	93
— Re, 3 K. & J. 317 ; 5 W. R. 552 ; 26 L. J. Ch. 398 ; 3 Jur. N. S. 485 . . . . .	19, 119, 238, 239, 328
— 20 Eq. 468 ; 45 L. J. Ch. 96 . . . . .	134
Fuller v. Knight, 6 Bea. 205 . . . . .	143, 335
Fullerton v. Martin, 1 Dr. & Sm. 31 ; 1 W. R. 378 ; 8 W. R. 289 ; 29 L. J. Ch. 469 ; 6 Jur. N. S. 265 ; 1 L. T. N. S. 531 . . . . .	97
Furley v. Hyder, 41 L. J. Ch. 483 . . . . .	177
Fussell v. Dowding, 14 Eq. 421 . . . . .	235
Futter v. Jackson, 6 Bea. 424 . . . . .	276
Fyler v. Fyler, 3 Bea. 550 . . . . .	142, 303, 329, 332, 333

	PAGE
GAFFEE, Re, 1 Macn. & G. 541 . . . . .	250, 266
Galliers v. Moss, 9 B. & C. 267 . . . . .	22
Gainsford v. Freeman, L. R. 1 C. P. 129 . . . . .	222
Gamston, Rector of, 1 Ch. D. 477 . . . . .	106
Gardiner v. Downes, 22 Bea. 395 ; 4 W. R. 621 ; 27 L. J. Ch. 280	105, 206, 215
— v. Fell, 1 J. & W. 22 . . . . .	323
Gardner v. Gardner, 1 Giff. 126 ; 7 W. R. 692 ; 33 L. T. 313	217, 248, 249
Garland, Ex parte, 10 Ves. 110 . . . . .	90, 137
Garlick v. Lawson, 10 Ha. App. XV. . . . .	234
Garmstone v. Gaunt, 1 Coll. 577 . . . . .	164
Garner v. Hannington, 22 Bea. 627 . . . . .	226
— v. Moore, 3 Dr. 277 ; 3 W. R. 497 . . . . .	100
Garrard v. Lauderdale, 3 Sim. 1 ; 2 R. & M. 451 . . . . .	41
— v. Tuck, 8 C. B. 231 . . . . .	315
Garratt v. Lancefield, 2 Jur. N. S. 177 ; 27 L. T. N. S. 12 ; 20 Jur. N. S. 177 . . . . .	121
Garrett v. Wilkinson, 2 D. G. & Sm. 244 . . . . .	65
Garrick v. Taylor, 29 Bea. 79 ; 7 Jur. N. S. 1174 ; 31 L. J. Ch. 68 ; 10 W. R. 39 . . . . .	67, 68
Garth v. Cotton, 1 Ves. Sen. 555 ; 1 W. & T. L. C. Eq. 75 ; 1 Dick. 199 . . . . .	222, 295
Garty, Re, 10 L. T. N. S. 331 . . . . .	204, 215
Gascoigne v. Thwing, 1 Vern. 366 . . . . .	68
Gaskell v. Gaskell, 2 Y. & J. 502 . . . . .	33
— v. Harman, 11 Ves. 507 . . . . .	116
Gaston v. Frankum, 2 D. G. & Sm. 561 . . . . .	262
Gaunt v. Taylor, 2 Bea. 346 ; 1 Y. & C. C. C. 538 ; 7 L. J. Ch. 2	16
Geaves, Ex parte, 8 D. M. & G. 291 ; 25 L. J. Bk. 53 ; 4 W. R. 536 ; 27 L. T. N. S. 129 ; 20 Jur. N. S. 651 . . . . .	137, 218, 219
Gee v. Liddell, 35 Bea. 621 . . . . .	28
Gerrard v. Gerrard, 2 Vern. 458 . . . . .	164
George III., goods of, 1 Add. 255 ; 3 Sw. & Tr. 199 . . . . .	242
George v. Evans, 4 Y. & C. 211 . . . . .	193
— v. Howard, 7 Price, 651 . . . . .	61, 62
— v. Milbanke, 9 Ves. 193 . . . . .	36
— Re, 5 Ch. D. 837 ; 37 L. T. N. S. 204 . . . . .	172, 173
Ghost v. Waller, 9 Bea. 497 . . . . .	18
Gibbins v. Taylor, 22 Bea. 344 ; 4 W. R. 432 . . . . .	99, 329
Gibbs v. Daniel, 4 Giff. 36 ; 10 W. R. 688 . . . . .	190
— v. Glamis, 11 Sim. 584 . . . . .	41
— v. Rumsey, 2 V. & B. 294 . . . . .	60
Gibson v. Bott, 7 Ves. 89 . . . . .	93, 94, 95, 97

	PAGE
Gibson v. Jeyes, 6 Ves. 266 . . . . .	184, 189
Giddings v. Giddings, 3 Russ. 241 . . . . .	74, 75, 78, 150
Gilbert v. Lewis, 1 D. J. & Sm. 48 ; 11 W. R. 223 ; 9 Jur. N. S. 187 ; 7 L. T. N. S. 541 . . . . .	254
— v. Overton, 2 H. & M. 110 . . . . .	28, 35
Gill v. Continental Gas Co., L. R. 7 Ex. 332 ; 4 L. J. Ex. 176 . . . . .	291
— v. Newton, 12 Jur. N. S. 220 . . . . .	280
Gillespie v. Alexander, 3 Russ. 130 . . . . .	329
Gilliland v. Crawford, I. R. 4 Eq. 42 . . . . .	101
Gisborne v. Gisborne, 2 App. Ca. 300 ; 46 L. J. Ch. 556 ; 18 W. R. 855 ; 22 L. T. N. S. 643 . . . . .	177
Gladding v. Yapp, 5 Mad. 59 . . . . .	61
Gladdon v. Stoneman, 1 Mad. 143 . . . . .	279
Glaister v. Hewer, 8 Ves. 195 n. . . . .	62
Glegg v. Rees, 7 Ch. 71 ; 40 L. J. Ch. 243 ; 25 L. T. N. S. 612 ; 20 W. R. 193 . . . . .	41, 42
Glenorchy v. Bosville, 1 W. & T. L. C. 1 . . . . .	43, 48
Glover v. Hall, 16 Sim. 568 . . . . .	255
— v. Monckton, 10 Moore, 453 ; 3 Bing. 13 ; 3 L. J. C. P. 189 . . . . .	4
— Re, 2 J. & H. 186 . . . . .	34
— v. Rogers, 11 Jur. 1000 ; 17 L. J. Ch. 2 . . . . .	11
Godden v. Crowhurst, 10 Sim. 642 . . . . .	177
Godfrey v. Godfrey, 11 W. R. 554 ; 2 N. R. 16 ; 8 L. T. N. S. 200 53, 57 . . . . .	
— v. Watson, 3 Atk. 518 . . . . .	197
Goldsmid v. Goldsmid, 19 Ves. 368 . . . . .	104
Goodenough v. Tremamondo, 2 Bea. 512 . . . . .	92
Goodfellow v. Burchett, 2 Vern. 298 . . . . .	169
Goodson v. Ellisson, 3 Russ. 583 . . . . .	224, 230
Goodtitle v. Whitby, 1 Burr. 226 . . . . .	8
Goodwin v. Gosnell, 2 Coll. 457 . . . . .	282
— Re, 17 Eq. 345 . . . . .	83
Goodyere v. Lake, Amb. 584 . . . . .	284
Goold v. Teague, 5 Jur. N. S. 116 ; 7 W. R. 84 ; 22 L. T. 251 . . . . .	22
Gordon v. Raynes, 3 P. W. 134 . . . . .	161
— v. Scott, 12 Moo. P. C. 1 . . . . .	77
Gore v. Bowser, 3 Sm. & G. 6 ; 24 L. J. Ch. 316 ; 3 W. R. 157 . . . . .	14
— Ex parte, 3 M. D. & D. 77 . . . . .	188
— v. Knight, 2 Vern. 535 . . . . .	251
Gorge's case, Cro. Car. 550 . . . . .	62
Gosling v. Carter, 1 Coll. 644 . . . . .	128
— v. Gosling, 3 Dr. 335 . . . . .	32
— v. Gosling, Johns. 265 ; 10 W. R. 785 . . . . .	84



	PAGE
Gough <i>v.</i> Bult, 16 Sim. 323 . . . . .	308
— <i>v.</i> Smith, W. N. 1872, 18 . . . . .	15
Gould <i>v.</i> Fleetwood, 3 P. W. 251 n. . . . .	201
Goulder <i>v.</i> Camm, 1 D. F. & J. 146 ; 8 W. R. 156 ; 29 L. J. Ch. 135 ; 6 Jur. N. S. 113 ; 1 L. T. N. S. 224 . . . . .	255, 267
Governesses' Benevolent Institution <i>v.</i> Rushbridger, 18 Bea. 467 . . . . .	275
Gower <i>v.</i> Mainwaring, 2 Ves. Sen. 87 . . . . .	103
Grabowski, Re, 6 Eq. 12 ; 37 L. J. Ch. 926 . . . . .	92
Grace, Ex parte, 1 B. & P. 376 . . . . .	76
Graham <i>v.</i> Graham, 16 Bea. 550 . . . . .	205
— <i>v.</i> Londonderry, 2 B. C. C. 246 . . . . .	149
— Re, 20 W. R. 289 . . . . .	256
Grant <i>v.</i> Grant, 34 Bea. 623 . . . . .	32
— <i>v.</i> Grant, 3 Russ. 598 . . . . .	280
Granville <i>v.</i> McNeile, 7 Ha. 156 ; 18 L. J. Ch. 406 . . . . .	12, 208
Grave <i>v.</i> Salisbury, 1 B. C. C. 425 . . . . .	169
Graves <i>v.</i> Dolphin, 1 Sim. 66 . . . . .	84
— <i>v.</i> Graves, 13 I. Ch. R. 182 . . . . .	55
— <i>v.</i> Griffith, 1 J. & W. 646 . . . . .	280
Gray, Ex parte, 4 D. & C. 778 ; 2 M. & A. 283 . . . . .	16
— <i>v.</i> Haig, 20 Bea. 219 . . . . .	100
Grayburn <i>v.</i> Clarkson, 3 Ch. 605 ; 37 L. J. Ch. 550 ; 18 L. T. N. S. 494 . . . . .	89, 114, 115
Great Eastern Railway Co. <i>v.</i> Turner, 8 Ch. 149, 153 ; 42 L. J. Ch. 83 ; 27 L. T. N. S. 697 ; 21 W. R. 163 . . . . .	99, 219
Greaves <i>v.</i> Mattison, 2 T. Jones, 201 . . . . .	162, 165
Green <i>v.</i> Angell, W. N., 1867, 305 . . . . .	133
— <i>v.</i> Belchier, 1 Atk. 505 . . . . .	163
— <i>v.</i> Britten, 1 D. J. & Sm. 619 . . . . .	94, 245
— <i>v.</i> Carlill, 4 Ch. D. 882 ; 46 L. J. Ch. 477 . . . . .	247, 248, 249
— <i>v.</i> Green, 5 Ha. 400 n. . . . .	264
— <i>v.</i> Marsden, 1 Dr. 646 ; 1 W. R. 511 . . . . .	52, 56
— Re, 2 D. F. & J. 121 . . . . .	110
— <i>v.</i> Stephens, 17 Ves. 76 . . . . .	48
Greenham <i>v.</i> Gibbeson, 10 Bing. 363 . . . . .	138
Greenhill <i>v.</i> Waldoe, Pr. Ch. 367 . . . . .	166
Greenhouse, Ex parte, 1 Mad. 92 . . . . .	216
Greenwood <i>v.</i> Evans, 4 Bea. 44 . . . . .	150, 151
— <i>v.</i> Wakeford, 1 Bea. 576 . . . . .	205, 215
Greetham <i>v.</i> Colton, 34 Bea. 615 ; 13 W. R. 1009 . . . . .	127, 128
Gregory <i>v.</i> Gregory, G. Coop. 201 ; Jac. 631 . . . . .	183, 193, 194, 195, 317
— <i>v.</i> Henderson, 4 Taunt. 772 . . . . .	3
— <i>v.</i> Lockyer, 6 Mad. 90 . . . . .	252
Greig <i>v.</i> Somerville, 1 R. & My. 338 . . . . .	329

	PAGE
Greisley v. Chesterfield, 13 Bea. 283 . . . . .	96, 115
Grenville v. Blythe, 16 Ves. 224 . . . . .	271
Gresley v. Mousley, 4 D. & J. 78 ; 3 D. F. & J. 433 ; 31 L. J. Ch. 537 ; 8 Jur. N. S. 320 . . . . .	189, 190, 313
Grey v. Grey, 2 Swans. 594 . . . . .	60, 61, 62, 63, 65
— v. Grey, Finch, 338 . . . . .	63
Grier, Re, I. R. 6 Eq. 1 ; L. R. 5 H. L. 688 . . . . .	46, 50
Griffin, Ex parte, 2 Gl. & J. 114 . . . . .	17
— v. Griffin, 1 Sch. & L. 352 . . . . .	74
Griffiths v. Evans, 5 Bea. 241 . . . . .	53
— v. Porter, 25 Bea. 236 . . . . .	19, 231, 334
— v. Vere, 9 Ves. 127 . . . . .	154
Grimoldby, Rector of, Re, W. N., 1876, 96 . . . . .	106
Groom v. Booth, 1 Drew. 548 ; 1 W. R. 423 . . . . .	125, 136
Grosvenor v. Sherratt, 28 Bea. 659 . . . . .	189
Grove v. Price, 26 Bea. 103 . . . . .	88, 176
Grover v. Hugell, 3 Russ. 432 . . . . .	189
Groves v. Groves, 3 Y. & J. 163 . . . . .	63, 67, 68, 85
Guardian Assurance v. Avonmore, 6 Ir. R. Eq. 391 . . . . .	36
Guest v. Smythe, 5 Ch. 551 ; 46 L. J. Ch. 30 ; 35 L. T. N. S. 590 ; 25 W. R. 68 . . . . .	185, 191
Guibert, Re, 16 Jur. 852 . . . . .	212
Gully v. Cregoe, 24 Bea. 185 . . . . .	53, 57
Gunson v. Simpson, 5 Eq. 332 . . . . .	204
Gurner, Ex parte, 1 M. D. & D. 497 . . . . .	219
Gurney v. Oranmore, 5 Ir. Ch. R. 436 . . . . .	38
Gwillam v. Holland, 2 Ves. Jun. 263 . . . . .	168
Gwyther v. Allen, 1 Ha. 505 . . . . .	147
H., Re, 1 Ch. D. 276 ; 45 L. J. Ch. 749 ; 24 W. R. 317 . . . . .	272
H. v. W., 3 K. & J. 382 . . . . .	84
Hackett v. McNamara, Ll. & G. t. Plunk. 283 . . . . .	124
Haddelsey v. Adams, 22 Bea. 266 ; 27 L. T. N. S. 148 . . . . .	8
Hadley v. Bank of Scotland, 3 D. J. & Sm. 70 . . . . .	72
— Ex parte, 5 D. G. & Sm. 67 . . . . .	204, 205, 208
Hadow v. Hadow, 9 Sim. 438 . . . . .	177
Hagell v. Currie, 2 Ch. 449 ; 36 L. J. Ch. 448 ; 16 L. T. N. S. 307 ; 15 W. R. 605 . . . . .	274, 275
Hagley v. West, 3 L. J. Ch. 63 . . . . .	311
Haig v. Swiney, 1 S. & S. 487 . . . . .	252
Haigh v. Kaye, 7 Ch. 469 ; 41 L. J. Ch. 567 ; 26 L. T. N. S. 675 ; 20 W. R. 597 . . . . .	26, 85
Haldenby v. Spofforth, 1 Bea. 395 . . . . .	122
Haley v. Bannister, 4 Mad. 275 . . . . .	154

	PAGE
Halford v. Stains, 16 Sim. 488 . . . . .	155
Hall v. Carter, 2 Atk. 354 . . . . .	163, 166
— v. Dewes, Jac. 189 . . . . .	138, 214
— v. Hallett, 1 Cox, 134 . . . . .	90, 193
— v. Hewer, Amb. 202 . . . . .	159
— v. Hurt, 2 J. & H. 76 . . . . .	164
— v. May, 3 K. & J. 585 ; 5 W. R. 869 . . . . .	23, 122
— v. Noyes, 3 Ves. 748 cited . . . . .	183
Hall's case, 1 Macn. & G. 307 . . . . .	140
Haly v. Barry, 3 Ch. 452 ; 37 L. J. Ch. 723 ; 18 L. T. N. S. 490 ; 16 W. R. 654 . . . . .	291
Hamilton v. Buckmaster, 3 Eq. 323 ; 36 L. J. Ch. 58 ; 15 L. T. 177 ; 15 W. R. 149 . . . . .	120
— v. Denny, 1 B. & B. 199 . . . . .	70, 76
— v. Fry, 2 Moll. 458 . . . . .	207
— v. Royse, 2 Sch. & L. 327 . . . . .	299
— v. Waring, 2 Bli. 196 . . . . .	83
— v. Wright, 9 Cl. & F. 111 . . . . .	182
Hammersley v. De Biel, 12 Cl. & F. 45 . . . . .	46
Hampshire v. Bradley, 2 Coll. 34 . . . . .	223
Hanbury v. Kirkland, 3 Sim. 265 . . . . .	19, 238, 240
Hanchett v. Briscoe, 22 Bea. 496 . . . . .	319
Hancock v. Hancock, 5 Vin. Abr. 292 . . . . .	169
Hancocks v. Lablache, L. R. 3 C. P. Div. 197 . . . . .	264
Hands v. Hands, T. & R. 437 n. . . . .	56
Hannah v. Hodgson, 30 Bea. 19 . . . . .	224
Hanover, King of, v. Bank of England, 8 Eq. 350 ; 21 L. T. N. S. 106 . . . . .	204
Hansard v. Kemneys, 2 Wils. 106 . . . . .	165
Hansell v. Hansell, V. C. M., June, 1875 . . . . .	208
Hanson v. Beverley, Sugd. V. & P. 848, 11th ed. . . . .	125
Harbin v. Darby, 28 Bea. 325 ; 29 L. J. Ch. 622 ; 8 W. R. 512 ; 2 L. T. N. S. 531 . . . . .	200
Harcourt v. White, 28 Bea. 303 ; 30 L. J. Ch. 681 ; 8 W. R. 715 308, 320 . . . . .	
Harden v. Parsons, 1 Ed. 148 . . . . .	136
Harding v. Glyn, 2 W. & T. L. C. 962 ; 1 Atk. 469 . . . . .	52, 56, 57
— v. Pingey, 10 Jur. N. S. 372 . . . . .	280
Hardingham v. Nicholls, 3 Atk. 304 . . . . .	299
Hardwick v. Mynd, 1 Anst. 109 . . . . .	18, 113
Hardwicke v. Vernon, 14 Ves. 510 . . . . .	228
Hardy v. Caley, 33 Bea. 365 . . . . .	19, 303
— v. Reeves, 4 Ves. 466 ; 5 Ves. 426 . . . . .	299
Harford v. Lloyd, 20 Bea. 310 . . . . .	99, 301
Hargreaves v. Michell, 6 Mad. 326 . . . . .	39

	PAGE
Harland <i>v.</i> Trigg, 1 B. C. C. C. 142 . . . . .	53, 56
Harnett <i>v.</i> MacDougall, 8 Bea. 187 . . . . .	267
Harper <i>v.</i> Hayes, 2 D. F. & J. 542; 9 W. R. 504; 7 Jur. N. S. 245; 3 L. T. N. S. 530 . . . . .	111, 112, 114
Harrington <i>v.</i> Atherton, 2 D. J. & Sm. 352; 11 L. T. N. S. 271; 10 Jur. N. S. 1093; 13 W. R. 62 . . . . .	95, 115
— <i>v.</i> Harrington, L. R. 5 H. L. 87; 40 L. J. Ch. 716 . . . . .	51
Harris <i>v.</i> Harris, 29 Bea. 107; 7 Jur. N. S. 955 . . . . .	139, 209, 231
— <i>v.</i> Poyner, 1 Drew. 174 . . . . .	94
Harrison <i>v.</i> Barton, 1 J. & H. 287 . . . . .	70
— <i>v.</i> Forth, Pr. Ch. 51 . . . . .	296
— <i>v.</i> Graham, 1 P. W. 241, n.; 3 Hill's MSS. 239 . . . . .	14, 19
— <i>v.</i> Gurney, 2 J. & W. 563 . . . . .	245
— <i>v.</i> Harrison, 2 H. & M. 237 . . . . .	243
— <i>v.</i> Naylor, 3 B. C. C. 108 . . . . .	168
— <i>v.</i> Randall, 9 Ha. 397 . . . . .	101, 102
— <i>Re</i> , 22 L. J. Ch. 69; 1 W. R. 58 . . . . .	210
— <i>v.</i> Round, 2 D. M. & G. 190; 1 W. R. 26; 22 L. J. Ch. 322; 20 L. T. N. S. 118 . . . . .	158
— <i>v.</i> Southampton, Mayor of, 4 D. M. & G. 137 . . . . .	104
— <i>v.</i> Thexton, 4 Jur. N. S. 550 . . . . .	90
Harrop <i>v.</i> Howard, 3 Hare, 624 . . . . .	266
Hart <i>v.</i> Denhan, W. N. 1871, 2 . . . . .	273
— <i>v.</i> Middlehurst, 3 Atk. 371 . . . . .	46
— <i>v.</i> Tribe, 18 Bea. 215; 24 Bea. 185; 1 D. J. & Sm. 418; 2 W. R. 289; 23 L. J. Ch. 462; 23 L. T. 124 . . . . .	53, 57
Hartington, Rector of, <i>Ex parte</i> , W. N. 1875, 40 . . . . .	106
Hartley <i>v.</i> Burton, 3 Ch. 368; 16 W. R. 876 . . . . .	224
— <i>v.</i> Hurle, 5 Ves. 545 . . . . .	256
Harton <i>v.</i> Harton, 7 T. R. 652 . . . . .	3, 7
Harvey <i>v.</i> Aston, 1 Atk. 361 . . . . .	168
— <i>v.</i> Harvey, 2 P. W. 21 . . . . .	166, 171
Hastie <i>v.</i> Hastie, 2 Ch. D. 304; 34 L. T. N. S. 747; 24 W. R. 564 . . . . .	304
Hatfield <i>v.</i> Minet, 8 Ch. D. 136; 47 L. J. Ch. 612; 38 L. T. N. S. 629; 26 W. R. 701 . . . . .	180
Hattatt, <i>Re</i> , W. N. 1870, 14; 18 W. R. 416 . . . . .	211
Hawkes <i>v.</i> Hubback, 11 Eq. 5; 40 L. J. Ch. 49; 23 L. T. N. S. 642; 19 W. R. 117 . . . . .	250, 251, 266
Hawkins <i>v.</i> Chappel, 1 Atk. 623 . . . . .	116
— <i>v.</i> Kemp, 3 East, 410 . . . . .	12, 118
— <i>v.</i> Luscombe, 2 Swans. 391 . . . . .	7
Hay, <i>Ex parte</i> , 3 D. G. & Sm. 485 . . . . .	179
Hay's case, 10 Ch. 593 . . . . .	187

## TABLE OF CASES.

lii

	PAGE
Hayes <i>v.</i> Oatley, 14 Eq. 1; 41 L. J. Ch. 510 . . . . .	232
Heap <i>v.</i> Jones, 5 W. R. 106 . . . . .	11
Heard <i>v.</i> Pilley, 4 Ch. 548; 38 L. J. Ch. 718; 21 L. T. N. S. 68; 17 W. R. 750 . . . . .	68
Hearle <i>v.</i> Greenbank, 3 Atk. 716 . . . . .	171
Heartley <i>v.</i> Nicholson, 19 Eq. 233; 44 L. J. Ch. 277; 31 L. T. N. S. 822; 23 W. R. 374 . . . . .	27, 28, 31
Heath <i>v.</i> Crealock, 10 Ch. 22; 44 L. J. Ch. 157; 31 L. T. N. S. 650; 23 W. R. 95 . . . . .	294, 295
— <i>v.</i> Henly, 1 Ch. Ca. 20 . . . . .	309
Heathcote <i>v.</i> Hulme, 1 J. & W. 122 . . . . .	286
Heatley <i>v.</i> Thomas, 15 Ves. 596 . . . . .	260
Heaton, Ex parte, Buck. 386 . . . . .	325
— <i>v.</i> Marriot, 1 P. W. 82 . . . . .	239
Hebblethwaite <i>v.</i> Cartwright, Forrester, 30 . . . . .	159
Hellier <i>v.</i> Jones, 1 Eq. Ca. Ab. 337 . . . . .	163
Hellmann, Re, 2 Eq. 363; 39 L. J. Ch. 760 . . . . .	110
Hemming <i>v.</i> Griffith, 2 Giff. 403 . . . . .	165
Henckell <i>v.</i> Daly, 1 Moore, P. C. C. 51 . . . . .	199
Henderson <i>v.</i> Eason, 17 Q. B. 701; 2 Ph. 308 . . . . .	69
— <i>v.</i> McIver, 3 Mad. 275 . . . . .	201
Heneage <i>v.</i> Huloke, 2 Atk. 456 . . . . .	159
Hennessey <i>v.</i> Bray, 33 Bea. 96; 11 W. R. 1053 . . . . .	14, 241
Henrion <i>v.</i> Bonham, Drur. 476 . . . . .	200
Henriques <i>v.</i> Bensusan, 20 W. R. 350 . . . . .	41
Hepworth <i>v.</i> Hepworth, 11 Eq. 10; 40 L. J. Ch. 111; 23 L. T. N. S. 388 . . . . .	63
Hercy <i>v.</i> Dinwoody, 2 Ves. Jun. 87 . . . . .	317
Heritage <i>v.</i> Paine, 2 Ch. D. 594; 45 L. J. Ch. 295; 34 L. T. N. S. 947	140
Hervey-Bathurst <i>v.</i> Stanley, 4 Ch. D. 251; 2 App. Ca. 698; 46 L. J. Ch. 162; 35 L. T. N. S. 709; 25 W. R. 482 . . . . .	157
Hesse <i>v.</i> Briant, 6 D. M. & G. 623; 5 W. R. 108; 28 L. T. N. S. 297 . . . . .	190
Heveningham <i>v.</i> Heveningham, 2 Vern. 355 . . . . .	165
Hewet <i>v.</i> Ireland, 1 P. W. 426 . . . . .	159
Hewitt <i>v.</i> Morris, T. & R. 241 . . . . .	95
Heysham <i>v.</i> Heysham, 1 Cox, 179 . . . . .	175
Heywood <i>v.</i> Heywood, 29 Bea. 9; 30 L. J. Ch. 155; 7 Jur. N. S. 228; 9 W. R. 62; 3 L. T. N. S. 429 . . . . .	153
Hibbert <i>v.</i> Cooke, 1 S. & S. 552 . . . . .	107
— <i>v.</i> Hibbert, 3 Mer. 681 . . . . .	200
Hichens <i>v.</i> Congreve, 1 R. & M. 150, n. . . . .	187, 274
Hickley <i>v.</i> Hickley, 2 Ch. D. 190; 45 L. J. Ch. 401; 34 L. T. N. S. 441; 24 W. R. 604 . . . . .	113, 183

	PAGE
Hickman <i>v.</i> Upsall, 20 Eq. 136; 2 Ch. D. 617; 23 W. R. 776; 4 Ch. D. 144; 46 L. J. Ch. 245; 35 L. T. N. S. 919; 25 W. R. 175 . . . . .	236, 314, 323
Hicks <i>v.</i> Hicks, 3 Atk. 274 . . . . .	286
— <i>v.</i> Sallitt, 3 D. M. & G. 782; 1 W. R. 226; 2 W. R. 173; 23 L. J. Ch. 57; 22 L. T. N. S. 322 . . . . .	323
Higginbotham <i>v.</i> Hawkins, 7 Ch. 676; 41 L. J. Ch. 828; 20 W. R. 955 . . . . .	313
Higginson <i>v.</i> Barneby, 2 S. & S. 516 . . . . .	50
Highway <i>v.</i> Banner, 1 B. C. C. 584 . . . . .	45
Hill <i>v.</i> Bishop of London, 1 Atk. 618 . . . . .	58, 59
— <i>v.</i> Chapman, 2 B. C. C. 231 . . . . .	174
— <i>v.</i> Crook, L. R. 6 H. L. 265; 42 L. J. Ch. 702 . . . . .	83
— <i>v.</i> Hill, 6 Sim. 144 . . . . .	50
— <i>v.</i> Hill, I. R. 8 Eq. 146 . . . . .	69
— <i>v.</i> Magan, 2 Moll. 460 . . . . .	122
— <i>v.</i> Pritchard, Kay, 394 . . . . .	119
— <i>Re</i> , W. N. 1874, 228 . . . . .	212
— <i>v.</i> Simpson, 7 Ves. 152 . . . . .	298
— <i>v.</i> Trenery, 23 Bea. 16 . . . . .	327
Hillman <i>v.</i> Westwood, 24 L. J. Ch. 57; 3 W. R. 41; 24 L. T. N. S. 154 . . . . .	212
Hinchcliffe <i>v.</i> Hinchcliffe, 3 Ves. 516 . . . . .	169
Hinchinbroke <i>v.</i> Seymour, 1 B. C. C. 394 . . . . .	160, 163
Hind <i>v.</i> Selby, 22 Bea. 373 . . . . .	94
Hinde <i>v.</i> Blake, 4 Bea. 597 . . . . .	275
Hindmarsh, <i>Re</i> , 1 Dr. & Sm. 129; 8 W. R. 203; 1 L. T. N. S. 475 . . . . .	309
Hinings <i>v.</i> Hinings, 2 H. & M. 32; 10 L. T. N. S. 294 . . . . .	234
Hinves <i>v.</i> Hinves, 3 Ha. 609 . . . . .	92, 94
Hinxman <i>v.</i> Poynder, 5 Sim. 546 . . . . .	53
Hitchens <i>v.</i> Hitchens, 2 Vern. 403 . . . . .	4
Hoare's case, 2 J. & H. 229 . . . . .	140
Hobart <i>v.</i> Suffolk, 2 Vern. 644 . . . . .	58
Hobday <i>v.</i> Peters (No. 2), 28 Bea. 354; 8 W. R. 512 . . . . .	261, 266, 325, 326
— <i>v.</i> Peters (No. 3), 28 Bea. 603 . . . . .	88, 89
Hobson <i>v.</i> Bell, 2 Bea. 17 . . . . .	112, 120
— <i>v.</i> Thelluson, L. R. 2 Q. B. 642 . . . . .	41
Hodgens <i>v.</i> Hodgens, 4 Cl. & F. 323 . . . . .	174, 263
Hodgkinson <i>v.</i> National Live Stock Co., 4 D. & J. 422 . . . . .	183
Hodgson <i>v.</i> Rawson, 1 Ves. Sen. 44 . . . . .	160
Hodkinson <i>v.</i> Quinn, 1 J. & H. 303; 30 L. J. Ch. 118; 9 W. R. 197; 7 Jur. N. S. 65; 3 L. T. N. S. 804 . . . . .	128
Hodson, <i>Re</i> , 9 Ha. 118 . . . . .	204

	PAGE
Hogarth <i>v.</i> Phillips, 4 Dr. 360 ; 7 W. R. 69 ; 28 L. J. Ch. 195 ; 4 Jur. N. S. 1093 ; 32 L. T. 155 . . . . .	31
Holder <i>v.</i> Durbin, 11 Bea. 594 . . . . .	215
Holderness <i>v.</i> Lampert, 29 Bea. 129 ; 30 L. J. Ch. 489 ; 7 Jur. N. S. 564 . . . . .	67
Holdsworth <i>v.</i> Goose, 29 Bea. 111 ; 39 L. J. Ch. 188 ; 9 W. R. 443 ; 7 Jur. N. S. 301 ; 4 L. T. N. S. 196 . . . . .	119
Holford <i>v.</i> Phipps, 3 Bea. 434 . . . . .	206, 224
Holgate <i>v.</i> Haworth, 17 Bea. 259 . . . . .	284
—— <i>v.</i> Jennings, 24 Bea. 623 . . . . .	94, 96, 143
Holland, Ex parte, 9 Ch. 307 ; 43 L. J. Bk. 85 ; 30 L. T. N. S. 106 ; 22 W. R. 425 . . . . .	265
—— <i>v.</i> Holland, 4 Ch. 449 ; 38 L. J. Ch. 252 ; 20 L. T. N. S. 58 ; 17 W. R. 565 . . . . .	333
—— <i>v.</i> Hughes, 16 Ves. 114 . . . . .	131
Hollingsworth <i>v.</i> Shakeshaft, 14 Bea. 497 . . . . .	284
Holloway <i>v.</i> Headington, 8 Sim. 324 . . . . .	32
Holman <i>v.</i> Loynes, 4 D. M. & G. 281 ; 23 L. J. Ch. 529 ; 22 L. T. 296 ; 2 W. R. 205 . . . . .	190
Holmes <i>v.</i> Dring, 2 Cox 1 . . . . .	137
—— <i>v.</i> Penney, 3 K. & J. 90 ; 5 W. R. 132 ; 26 L. J. Ch. 179 ; 28 L. T. N. S. 156 ; 3 Jur. N. S. 80 . . . . .	178
Holt <i>v.</i> Holt, 1 Ca. Ch. 190 . . . . .	73, 78
Holyman, Ex parte, 8 Jur. 156 . . . . .	188
Honour <i>v.</i> Honour, 1 P. Wms. 123 ; 2 Vern. 658 . . . . .	45
Honywood <i>v.</i> Honywood, 18 Eq. 306 . . . . .	107, 108
Hood <i>v.</i> Clapham, 19 Bea. 90 ; 3 W. R. 78 ; 24 L. J. Ch. 193 ; 24 L. T. 206 . . . . .	92, 232
—— <i>v.</i> Oglander, 34 Bea. 513 ; 34 L. J. Ch. 528 . . . . .	55, 84
Hooper, Mary, Re, 29 Bea. 656 ; 9 W. R. 723 ; 7 Jur. N. S. 595 . . . . .	108
—— <i>v.</i> Strutton, 12 W. R. 367 . . . . .	128
Hooson, Ex parte, 8 Ch. 231 ; 42 L. J. Bk. 19 ; 28 L. T. N. S. 4 ; 21 W. R. 152 . . . . .	277
Hope <i>v.</i> Carnegie, 1 Ch. 320 ; 14 L. T. N. S. 117 ; 12 Jur. N. S. 284 ; 14 W. R. 489 . . . . .	246
—— <i>v.</i> Liddell, 21 Bea. 183 ; 25 L. J. Ch. 90 ; 20 Jur. 105 ; 4 W. R. 145 . . . . .	21
Hopgood <i>v.</i> Parkin, 11 Eq. 74 ; 22 L. T. N. S. 772 ; 18 W. R. 908 . . . . .	142, 235
Hopper <i>v.</i> Conyers, 2 Eq. 549 . . . . .	303, 304, 305
Hora <i>v.</i> Hora, 33 Bea. 88 . . . . .	177
Horn <i>v.</i> Horn, 2 S. & S. 448 . . . . .	127
Horner <i>v.</i> Wheelwright, 2 Jur. N. S. 367 . . . . .	221
Horsfall, Re, M'Cl. & Y. 292 . . . . .	21
Horton <i>v.</i> Brocklehurst, 29 Bea. 504 . . . . .	91, 228

	PAGE
Horwood v. West, 1 S. & S. 387 . . . . .	55, 57
Hoskin, Re, 5 Ch. D. 229; 46 L. J. Ch. 274; 35 L. T. N. S. 935; 25 W. R. 779 . . . . .	232, 233, 237
Hoskins v. Campbell, W. N. 1869, 59 . . . . .	221, 222
Hotchkin v. Humfrey, 2 Mad. 65 . . . . .	161, 163
Hotham, Re, 12 Eq. 76 . . . . .	103
Hougham v. Sandys, 2 Sim. 95 . . . . .	146
Houghton v. Houghton, Ex parte, 17 Ves. 251 . . . . .	67
— v. Houghton, 11 Sim. 491 . . . . .	70
House v. Way, 12 Jur. 959 . . . . .	91
Hovenden v. Annesley, 2 Sch. & L. 629 . . . . .	279, 313, 315, 320, 321
Howard v. Bank of England, 19 Eq. 295; 44 L. J. Ch. 329; 31 L. T. N. S. 871; 23 W. R. 303. . . . .	250
— v. Digby, 2 Cl. & F. 634 . . . . .	249
— v. Ducane, T. & R. 81 . . . . .	189
— v. Papera, 1 Mad. 142 . . . . .	273
— v. Rhodes, 1 Keen. 581 . . . . .	205
Howarth, Re, 8 Ch. 415; 42 L. J. Ch. 316; 28 L. T. N. S. 54; 21 W. R. 490 . . . . .	176
Howe v. Dartmouth, 7 Ves. 137 . . . . .	90, 91, 95, 122, 231
Howgrave v. Cartier, 3 V. & B. 79 . . . . .	160, 161
Howkins v. Howkins, 1 Dr. & Sm. 75 . . . . .	280
Howorth v. Deem, 1 Ed. 355 . . . . .	294
Hubbard v. Young, 10 Bea. 205 . . . . .	92
Huet v. Fletcher, 1 Atk. 467 . . . . .	317
Hughes v. Empson, 22 Bea. 181 . . . . .	89, 114
— Ex parte, 6 Ves. 617 . . . . .	188, 191, 192
— v. Howard, 25 Bea. 575 . . . . .	74, 76
— Re, 2 H. & M. 89 . . . . .	291
— c. Stubbs, 1 Ha. 476 . . . . .	34
— v. Wells, 9 Ha. 749 . . . . .	260
— v. Wynne, T. & R. 307 . . . . .	39
Huguenin v. Baseley, 14 Ves. 273 . . . . .	81, 183, 190
Hulkes v. Barrow, Tam. 264 . . . . .	149
Hull v. Christian, 17 Eq. 546; 43 L. J. Ch. 861 . . . . .	200
Hulme v. Hulme, 2 M. & K. 682 . . . . .	212
— v. Tenant, 1 B. C. C. 16 . . . . .	256, 257, 261
Humberston v. Humberston, 1 P. W. 332 . . . . .	49
Hume v. Richardson, 4 D. F. & J. 29; 8 Jur. N. S. 686; 31 L. J. Ch. 713; 10 W. R. 558; 6 L. T. N. S. 624 . . . . .	97, 132
— v. Rundell, 2 S. & S. 174 . . . . .	167
Humphrey v. Humphrey, 1 Sim. N. S. 536 . . . . .	252
Hunt v. Baker, Freem. 62 . . . . .	152
— v. Elmes, 2 D. F. & J. 578; 8 W. R. 632; 2 L. T. N. S. 623 . . . . .	295



	PAGE
Hurd v. Hurd, 11 W. R. 50 ; 7 L. T. N. S. 590 . . . . .	135
Hutcheson v. Hammond, 3 B. C. C. 128 . . . . .	160
Hutchison & Tennant, Re, 8 Ch. D. 543 . . . . .	53, 54, 56, 57
Hynes v. Redington, 1 J. & L. 589 . . . . .	143

IMPERIAL Mercantile Credit Association v. Coleman, L. R. 6 H. L.

189 . . . . .	187, 326
Incedon v. Northcote, 3 Atk. 430 . . . . .	166, 172
Ingle v. Partridge, 32 Bea. 661 ; 34 Bea. 411 . . . . .	17, 239, 275
Ingram, Re, 11 W. R. 980 . . . . .	136
Inkersole, Ex parte, 2 G. & J. 230 . . . . .	209
Inskip, Re, 3 Giff. 359 . . . . .	68
Irby v. Irby, 25 Bea. 632 ; 3 Jur. N. S. 1314 . . . . .	336
Irvine v. Sullivan, 8 Eq. 673 . . . . .	53
Isaac v. Wall, 6 Ch. D. 706 ; 46 L. J. Ch. 576 ; 37 L. T. N. S. 227 ; 25 W. R. 844 . . . . .	150, 151
Isaacs v. Weatherstone, 10 Ha. App. xxx. . . . .	275
Isaacson v. Harwood, 3 Ch. 225 ; 37 L. J. Ch. 209 . . . . .	333
Isherwood v. Oldknow, 3 M. & Selw. 404 . . . . .	9
Ivy v. Gilbert, 2 P. W. 13 . . . . .	164, 166

JACKSON v. Hamilton, 3 J. & L. 702 . . . . .	200
— v. Hobhouse, 2 Mer. 488 . . . . .	266
— v. Innes, 1 Bligh, 104 . . . . .	270
— v. Jackson, 9 Ves. 596 . . . . .	70
— v. Noble, 2 Keen, 590 . . . . .	48
— v. Parker, Amb. 687 . . . . .	270
— v. Petrie, 10 Ves. 165 . . . . .	244
— Re, 16 W. R. 572 ; 18 L. T. N. S. 80 . . . . .	204
— v. Rowe, 2 S. & S. 472 ; 4 Russ. 514 . . . . .	298
— v. Turnley, 1 Drew. 617 . . . . .	234
— v. Welsh, Ll. & G. (Plunk.) 346 . . . . .	76
Jacobs v. Amyatt, 1 Mad. 376 n. . . . .	256
Jacubs v. Rylance, 17 Eq. 341 ; 43 L. J. Ch. 280 . . . . .	219, 334, 336
James v. Dean, 11 Ves. 383 ; 15 Ves. 236 . . . . .	74, 78
— Ex parte, 8 Ves. 337 . . . . .	185, 188, 191, 192
— v. Frearson, 1 Y. & C. C. C. 370 . . . . .	13
— v. May, L. R. 6 H. L. 328 ; 42 L. J. Ch. 802 . . . . .	140
Jameson, Ex parte, 19 Eq. 430 ; 44 L. J. Ch. 480 ; 23 W. R. 591 . . . . .	144
Jarman, Re, 1 Eq. 71 . . . . .	257
Jeans v. Cooke, 24 Bea. 513 ; 6 W. R. 175 ; 27 L. J. Ch. 202 ; 4 Jur. N. S. 57 ; 30 L. T. 253 . . . . .	63, 66

	PAGE
Jebb <i>v.</i> Tugwell, 20 Bea. 84; 4 W. R. 157; 25 L. J. Ch. 109; 26 L. T. N. S. 250; 20 Jur. N. S. 54 . . . . .	93
Jefferson <i>v.</i> Morton, 2 Wms. Saund. 11 c. n. . . . .	8
—— <i>v.</i> Tyrer, 9 Jur. 1083 . . . . .	116
Jefferys <i>v.</i> Jefferys, Cr. & Ph. 138 . . . . .	30, 32
—— <i>v.</i> Marshall, W. N. 1870, 227 . . . . .	228
—— <i>v.</i> Small, 1 Vern. 217 . . . . .	70
Jenkins <i>v.</i> Hiles, 6 Ves. 654 n. . . . .	126
—— <i>v.</i> Milford, 1 J. & W. 629 . . . . .	222
Jenner <i>v.</i> Morris, 1 Ch. 603; 14 W. R. 1003 . . . . .	226
Jenney <i>v.</i> Bell, 2 Ch. D. 547; 45 L. J. Ch. 369; 34 L. T. N. S. 485; 24 W. R. 550 . . . . .	188
Jerdein <i>v.</i> Bright, 2 J. & H. 325 . . . . .	279
Jermyn <i>v.</i> Fellows, Forrester, 93 . . . . .	157, 162
Jerrard <i>v.</i> Saunders, 2 Ves. Jun. 187; 4 B. C. C. 322 . . . . .	293, 295
Jervis <i>v.</i> Wolferstan, 18 Eq. 18; 43 L. J. Ch. 809; 30 L. T. N. S. 452 . . . . .	231
Jervoise <i>v.</i> Northumberland, 1 J. & W. 559 . . . . .	44, 47
—— <i>v.</i> Silk, G. Coop. 52 . . . . .	174
Jesse <i>v.</i> Bennett, 6 D. M. & G. 609; 26 L. J. Ch. 63; 28 L. T. N. S. 134; 2 Jur. N. S. 1125 . . . . .	332
Jesson <i>v.</i> Jesson, 2 Vern. 255 . . . . .	169
Jessop <i>v.</i> Blake, 3 Giff. 639; 10 W. R. 643; 8 Jur. N. S. 537; 6 L. T. N. S. 554 . . . . .	235
Jeyes <i>v.</i> Savage, 10 Ch. 563; 44 L. J. Ch. 706; 33 L. T. N. S. 139; 23 W. R. 764 . . . . .	161
Job <i>v.</i> Job, 6 Ch. D. 564; 26 W. R. 206 . . . . .	98
Jodrell <i>v.</i> Jodrell, 14 Bea. 397 . . . . .	177
Joel <i>v.</i> Mills, 7 Jur. N. S. 389; 9 W. R. 298; 30 L. J. Ch. 354; 3 L. T. N. S. 882 . . . . .	39
Johns <i>v.</i> James, 8 Ch. D. 744 . . . . .	41
Johnson <i>v.</i> Ball, 5 De G. & Sm. 85 . . . . .	34
—— <i>v.</i> Fesemeyer, 3 D. & J. 13 . . . . .	190
—— <i>v.</i> Gallagher, 3 D. F. & J. 513; 30 L. J. Ch. 298; 7 Jur. N. S. 273 . . . . .	251, 257, 260
—— <i>v.</i> Johnson, 2 Coll. 441 . . . . .	93
—— <i>v.</i> Johnson, 1 Keen. 648 . . . . .	251
—— <i>v.</i> Kennett, 3 M. & K. 624 . . . . .	126, 127
—— <i>v.</i> Kershaw, 1 De G. & Sm. 260 . . . . .	37
—— <i>v.</i> Lumb, 15 Sim. 308 . . . . .	251
—— <i>v.</i> Legard, T. & R. 294 . . . . .	36
—— <i>v.</i> Lloyd, 7 Ir. Eq. R. 252 . . . . .	143
—— <i>v.</i> Newton, 11 Ha. 160 . . . . .	98, 100
—— <i>v.</i> Prendergast, 28 Bea. 480 . . . . .	283, 284

	PAGE
Johnson, Re, 8 Eq. 348 . . . . .	106
— v. Routh, 27 L. J. Ch. 304; 6 W. R. 6; 3 Jur. N. S. 1048; 30 L. T. 111 . . . . .	95, 115
Johnston v. Rowlands, 2 D. G. & Sm. 356 . . . . .	54
— v. Moore, 27 L. J. Ch. 453 . . . . .	94
Jones v. Badley, 3 Ch. 362; 16 W. R. 713 . . . . .	82
— v. Chennell, 8 Ch. D. 507; 47 L. J. Ch. 80; 38 L. T. N. S. 494 . . . . .	143
— v. Croucher, 1 S. & S. 315 . . . . .	36
— v. Cuthbertson, L. R. 7 Q. B. 218; L. R. 8 Q. B. 504 . . . . .	264
— v. Foxall, 15 Bea. 388 . . . . .	283, 285, 287
— v. Higgins, 2 Eq. 538; 35 L. J. Ch. 403; 14 L. T. N. S. 126; 14 W. R. 448 . . . . .	87
— v. Jones, 5 Ha. 440 . . . . .	150, 151, 164
— v. Jones, 8 Sim. 633 . . . . .	291
— v. Kearney, 1 Dr. & War. 134; 1 C. & L. 34 . . . . .	77
— v. Langhton, 1 Eq. Ca. Ab. 392 . . . . .	45
— v. Lewis, 2 Ves. Sen. 240; 1 Cox. 199 . . . . .	98, 223
— v. Lewis, 3 De G. & Sm. 471 . . . . .	142
— v. Lock, 1 Ch. 25; 35 L. J. Ch. 117; 13 L. T. N. S. 514; 11 Jur. N. S. 913; 14 W. R. 149 . . . . .	29
— v. Maggs, 9 Ha. 605 . . . . .	155
— v. Nabbs, 1 Eq. Ca. Abr. 405 . . . . .	80
— v. Phipps, L. R. 3 Q. B. 567 . . . . .	221
— v. Powell, 4 Bea. 96 . . . . .	103
— v. Powles, 3 M. & K. 581 . . . . .	297
— Re, W. N. 1866, 65 . . . . .	234
— Re, 3 Drew. 679 . . . . .	235
— v. Thomas, 2 Y. & C. Ex. 498 . . . . .	190
Josselyn v. Josselyn, 9 Sim. 63 . . . . .	84
Joy v. Campbell, 1 Sch. & L. 328 . . . . .	18, 218
Joyce v. Cottrell, 12 Eq. 569; 40 L. J. Ch. 70; 19 W. R. 1076 . . . . .	174, 176
— v. De Moleyns, 2 J. & L. 374 . . . . .	295
Jubber v. Jubber, 9 Sim. 503 . . . . .	57
Juler v. Juler, 29 Bea. 34; 30 L. J. Ch. 142; 6 Jur. N. S. 1320; 3 L. T. N. S. 395; 9 W. R. 61 . . . . .	243
Justice v. Wynne, 12 Ir. Ch. R. 299 . . . . .	28
KAY v. Johnston, 21 Bea. 536 . . . . .	70
Kaye v. Powel, 1 Ves. Jun. 408 . . . . .	222
Kearsley v. Woodcock, 3 Ha. 185 . . . . .	178
Keating v. Keating, Ll. & G. t. Sug. 133 . . . . .	124
Keays v. Lane, Ir. R. 3 Eq. 1 . . . . .	138, 259
Kebble, Ex parte, 11 Ves. 606 . . . . .	172

	PAGE
<i>Keble v. Thompson</i> , 3 B. C. C. 112 . . . . .	220
<i>Keech v. Sandford</i> , 1 W. & T. L. C. 44 . . . . .	73, 78
<i>Keer v. Brown, Johns.</i> 138 ; 7 W. R. 372 ; 28 L. J. Ch. 477 ; 5 Jur. N. S. 457 ; 33 L. T. 179 . . . . .	258
<i>Kekewich v. Manning</i> , 1 D. M. G. 176 . . . . .	28, 33
— <i>v. Marker</i> , 3 Macn. & G. 311 . . . . .	118
<i>Kellaway v. Johnson</i> , 5 Bea. 319 . . . . .	334
<i>Kelly v. Bellew</i> , 4 B. P. C. 495 . . . . .	164
— <i>v. Kelly</i> , I. R. 8 Eq. 403 . . . . .	74
<i>Kempson v. Ashbee</i> , 10 Ch. 15 . . . . .	194
<i>Kendall v. Granger</i> , 5 Bea. 300 . . . . .	59
<i>Kennedy v. Daly</i> , 1 Sch. & L. 379 . . . . .	296
<i>Kenney v. Brown</i> , 3 Ridg. 518 . . . . .	192
<i>Kensington v. Dolland</i> , 2 M. & K. 184 . . . . .	257
<i>Kenrick v. Beauclercck</i> , 3 B. & P. 178 . . . . .	2
<i>Kerrison, Re</i> , 12 Eq. 422 ; 40 L. J. Ch. 637 ; 25 L. T. N. S. 57 ; 19 W. R. 967 . . . . .	174
<i>Kershaw, Re</i> , 6 Eq. 322 ; 37 L. J. Ch. 751 ; 18 L. T. N. S. 899 109, 138, 179	
<i>Kevan v. Crawford</i> , 6 Ch. D. 29 ; 45 L. J. Ch. 658 ; 37 L. T. N. S. 322 ; 26 W. R. 49 . . . . .	262
<i>Kiddill v. Farnell</i> , 3 Sm. & G. 428 . . . . .	34
<i>Kilbee v. Sneyd</i> , 2 Moll. 199 . . . . .	19
<i>Kildare v. Eustace</i> , 1 Vern. 418 . . . . .	244
<i>Killick, Ex parte</i> , 3 M. D. & D. 480 . . . . .	254
— <i>v. Flexney</i> , 4 B. C. C. 161 . . . . .	185
<i>Kilpin v. Kilpin</i> , 1 M. & K. 542 . . . . .	65
<i>Kilvington v. Gray</i> , 10 Sim. 293 . . . . .	181
<i>Kimber v. Barber</i> , 8 Ch. 56 ; 27 L. T. N. S. 526 ; 21 W. R. 65 . . . . .	187
<i>King v. Corke</i> , 1 Ch. D. 57 ; 45 L. J. Ch. 190 ; 33 L. T. N. S. 375 ; 24 W. R. 23 . . . . .	328
— <i>v. Denison</i> , 1 V. & B. 273 . . . . .	58, 59
— <i>Ex parte</i> , 2 M. & A. 410 . . . . .	219, 336
— <i>v. Isaacson</i> , 9 W. R. 369 . . . . .	234
— <i>v. King</i> , 1 D. & J. 663 ; 27 L. J. Ch. 29 ; 6 W. R. 85 ; 30 L. T. 177 . . . . .	101, 102, 224
— <i>v. Mullins</i> , 1 Drew. 308 . . . . .	236
— <i>Re</i> , 5 D. G. & Sm. 647 ; 16 Jur. 1153 . . . . .	22
— <i>v. Withers, Forrester</i> , 117 ; Pr. Ch. 348 . . . . .	160, 162
<i>Kingdon v. Bridges</i> , 2 Vern. 67 . . . . .	62
— <i>v. Castleman</i> , W. N. 1877, 15 . . . . .	89
<i>Kingham v. Lee</i> , 15 Sim. 400 . . . . .	20
<i>Kingsley, Re</i> , 26 Bea. 84 . . . . .	268
<i>Kingsman v. Kingsman</i> , 1 Eq. Ca. Abr. 405 . . . . .	80

	PAGE
Kingston, Ex parte, 6 Ch. 632 ; 40 L. J. Bk. 91 ; 19 W. R. 910	99, 302
— v. Pierepont, 1 Vern. 5	83
Kirby v. Mash, 3 Y. & C. 295	279
Kirk v. Paulin, 7 Vin. Abr. 95, Pl. 43	256
Kirkman v. Booth, 11 Bea. 273	90, 197
Kirkpatrick, Re, 15 Jur. 941	135
Kirkwood v. Thompson, 2 D. J. & Sm. 612 ; 34 L. J. Ch. 305, 501	186
Knapp v. Knapp, 12 Eq. 238 ; 24 L. T. N. S. 540	165, 167
Knight v. Bowyer, 2 D. & J. 421 ; 6 W. R. 565 ; 27 L. J. Ch. 520 ; 4 Jur. N. S. 569 ; 31 L. T. 287	309, 319
— v. Boughton, 11 Cl. & F. 513	54
— v. Cameron, 14 Ves. 389	104
— v. Knight, 6 Sim. 121.	250
— v. Marjoribanks, 2 Macn. & G. 10	184, 186
— v. Martin, 1 R. & My. 70	220
— v. Plymouth, 1 Dick. 120	99
— Re, 27 Bea. 45 ; 5 Jur. N. S. 326 ; 33 L. T. 54	232
— v. Robinson, 2 K. & J. 503	22
Knott v. Cottee, 16 Bea. 77	132, 283, 285, 287
Knowles, Re, 18 L. T. N. S. 809	109
Knox v. Gye, L. R. 5 H. L. 674 ; 42 L. J. Ch. 284	313
Kronheim v. Johnson, 7 Ch. D. 60 ; 47 L. J. Ch. 132 ; 38 L. T. N. S. 751 ; 26 W. R. 142	25, 26, 28
LACEY, Ex parte, 6 Ves. 625	182, 188, 191, 192
— v. Hill, 19 Eq. 346 ; 42 L. J. Ch. 86 ; 27 L. T. N. S. 504 ; 21 W. R. 153	270
— v. Hill, 4 Ch. D. 554 ; 35 L. T. N. S. 148	303
Lake v. Craddock, 9 Ves. 597	70
— v. Gibson, 1 Eq. Ca. Ab. 290 ; 1 W. & T. L. C. 198	69, 70, 71
Lambe v. Eames, 6 Ch. 597 ; 40 L. J. Ch. 447 ; 23 L. T. N. S. 175 ; 19 W. R. 659	54, 56, 57
— v. Orton, 1 Dr. & Sm. 125 ; 8 W. R. 202 ; 29 L. J. Ch. 319 ; 1 L. T. N. S. 394 ; 6 Jur. N. S. 290	28
Lambert v. Lambert, 16 Eq. 320 ; 43 L. J. Ch. 106 ; 29 L. T. N. S. 878 ; 21 W. R. 748	96, 115
— v. Overton, 13 W. R. 227	34
— v. Parker, G. Coop. 143	173
Lamplugh v. Lamplugh, 1 P. W. 111	61, 62
Lancashire v. Lancashire, 2 Ph. 657	214
— and Yorkshire Bank v. Tee, W. N. 1875, 213	262, 264
Lancaster v. Elce, 31 Bea. 325 ; 10 W. R. 824	40
Lander v. Weston, 3 Dr. 389 ; 4 W. R. 158 ; 25 L. J. Ch. 235 ; 26 L. T. N. S. 254 ; 20 Jur. N. S. 58	138, 142, 143

	PAGE
Lane v. Debenham, 11 Ha. 192 ; 1 W. R. 463 . . . . .	122
— v. Dighton, Amb. 409 . . . . .	304
— v. Husband, 14 Sim. 656 . . . . .	38
Langdale v. Briggs, 8 D. M. & G. 391 ; 4 W. R. 703 . . . . .	226, 234
— Re, 10 Eq. 39 . . . . .	109, 139
Langford v. Gascoyne, 11 Ves. 333 . . . . .	19
— Re, 2 J. & H. 458 ; 31 L. J. Ch. 334 ; 5 L. T. N. S. 579 ; 8 Jur. N. S. 114 ; 10 W. R. 121 . . . . .	136
Langham v. Sandford, 19 Ves. 643 . . . . .	61
Langley v. Hawk, 5 Mad. 46 . . . . .	272
Langstaffe v. Fenwick, 10 Ves. 404 . . . . .	197
Langston v. Ollivant, G. Coop. 33 . . . . .	137
Lanoy v. Athol, 2 Atk. 444 . . . . .	166
Lantsbery v. Collier, 2 K. & J. 709 . . . . .	116, 117
Larken, Re, W. N. 1872, 85 . . . . .	109
La Terrière v. Bulmer, 2 Sim. 18 . . . . .	95
Lavender v. Stanton, 6 Mad. 46 . . . . .	125
Law v. Bagwell, 4 Dr. & W. 398 . . . . .	41
Lawrence v. Bowles, 2 Ph. 140 . . . . .	337
— v. Campbell, 7 W. R. 170 . . . . .	38
— v. Maggs, 1 Eden, 455 n. . . . .	78, 148
Lawton v. Ford, 2 Eq. 97 . . . . .	307
— v. Swetenham, 18 Bea. 98 . . . . .	162
Layton, Re, W. N. 1873, 49 . . . . .	327
Leake v. Leake, 1 J. & W. 605 . . . . .	280
Leathes v. Leathes, 5 Ch. D. 221 ; 46 L. J. Ch. 562 ; 36 L. T. N. S. 646 ; 25 W. R. 492 . . . . .	226
Leche v. Kilmorey, T. & R. 207 . . . . .	180
Lechmere v. Carlisle, 3 P. W. 215 . . . . .	278
— v. Charlton, 15 Ves. 193 . . . . .	165
— v. Lavie, 2 M. & K. 201 . . . . .	55
— v. Lechmere, 3 P. W. 211 ; Sugd. V. & P. App. 1117 145, 305	
Ledwich v. Ledwich, 6 Ir. Eq. R. 561 . . . . .	210
Lee v. Brown, 4 Ves. 362 . . . . .	178
— v. Henley, 1 Vern. 37 . . . . .	31
— v. Howlett, 2 K. & J. 531 . . . . .	291
— v. Lee, 4 Ch. D. 175 ; 46 L. J. Ch. 81 ; 36 L. T. N. S. 138 . . . . .	46
— v. Prieaux, 3 B. C. C. 381 . . . . .	256
— Re, 32 L. T. N. S. 298 . . . . .	107
— v. Sankey, 15 Eq. 204 ; 21 W. R. 286 ; 27 L. T. N. S. 809 . . . . .	15, 19, 241
— v. Vernon, 5 B. P. C. 10 . . . . .	77
— v. Young, 2 Y. & C. C. C. 532 . . . . .	146, 216

	PAGE
Leeds v. Amherst, 20 Bea. 230 . . . . .	99
— v. Amherst, 2 Ph. 117 . . . . .	313
Lees v. Nuttall, 1 R. & M. 53 . . . . .	187
Lefroy v. Flood, 4 I. Ch. R. 1 . . . . .	54
Legg v. Goldwire, Talb. 20 . . . . .	45
— v. Mackrell, 2 D. F. & J. 551; 4 L. T. N. S. 568; 5 Jur. N. S. 1154 . . . . .	11, 206
Le Hunt v. Webster, 9 W. R. 918 . . . . .	207
Leigh v. Barry, 3 Atk. 583 . . . . .	233, 239
— v. Lloyd, 2 D. J. & Sm. 330; 34 L. J. Ch. 646 . . . . .	123
— Re, 6 Ch. 887; 40 L. J. Ch. 442; 25 L. T. N. S. 644; 19 W. R. 1105 . . . . .	105
Leith v. Irvine, 1 M. & K. 277 . . . . .	197
Le Jeune v. Budd, 6 Sim. 441 . . . . .	104
Le Marchant v. Le Marchant, 18 Eq. 414 . . . . .	53, 57
Lempster v. Pomfret, Amb. 154; 1 Dick. 238 . . . . .	227
Lench v. Lench, 10 Ves. 511 . . . . .	68, 304, 305
Le Neve v. Le Neve, Amb. 436; 2 W. & T. L. C. 49; 1 Ves. 64; 3 Atk. 646 . . . . .	294, 297, 299
Leonard v. Sussex, 2 Vern. 526 . . . . .	48, 49
Leslie v. Baillie, 2 Y. & C. C. C. 91 . . . . .	231
— v. Leslie, Ll. & G. (Sugd.) 1 . . . . .	173
— Re, 2 Ch. D. 185; 45 L. J. Ch. 668; 34 L. T. N. S. 239; 24 W. R. 546 . . . . .	105, 106
Lester v. Lester, 6 Ir. Ch. R. 513 . . . . .	89
Levey v. Pendergrass, 2 Bea. 415 . . . . .	112
Lewellin v. Mackworth, 2 Eq. Ca. Ab. 579 . . . . .	315
Lewes v. Barnett, 6 Ch. D. 252 . . . . .	278
— Re, 6 Ch. 356; 40 L. J. Ch. 602; 24 L. T. N. S. 533; 19 W. R. 617 . . . . .	235
Lewis Bowles' case, Tudor, L. C. R. P. 27 . . . . .	107
— Ex parte, 3 M. D. D. 173 . . . . .	120
— v. Freke, 2 Ves. Jun. 507 . . . . .	166
— v. Hillman, 3 H. L. C. 607 . . . . .	186, 187
— v. King, 2 B. C. C. 600 . . . . .	57
— v. Lewis, 1 Cox, 162 . . . . .	167, 181
— v. Madocks, 8 Ves. 150 . . . . .	305
— v. Mathews, 2 Eq. 177; 12 Jur. N. S. 542; 14 W. R. 682; 35 L. J. Ch. 638 . . . . .	254, 255
— v. Nobbs, 8 Ch. D. 591; 47 L. J. Ch. 662; 26 W. R. 631 100, 240 . . . . .	
— v. Rees, 3 K. & J. 132; 2 L. J. Ch. 101; 5 W. R. 96 9, 36, 320 . . . . .	
— v. Thomas, 3 Ha. 26 . . . . .	322

	PAGE
Lichfield <i>v.</i> Baker, 13 Bea. 447 . . . . .	92
Liddard <i>v.</i> Liddard, 28 Bea. 266; 6 Jur. N. S. 439; 2 L. T. N. S. 200 . . . . .	52
Liebman <i>v.</i> Harcourt, 2 Mer. 513 . . . . .	301
Life Association of Scotland <i>v.</i> Siddal, 3 D. F. & J. 58; 9 W. R. 541; 4 L. T. N. S. 311; 7 Jur. N. S. 785 . . . . .	14, 102, 194, 241, 310, 317, 318, 320, 336
Lillia <i>v.</i> Airey, 1 Ves. Jun. 277 . . . . .	261
Limbrey <i>v.</i> Gurr, 6 Mad. 151 . . . . .	82
Lincoln <i>v.</i> Newcastle, 12 Ves. 227 . . . . .	44
— <i>v.</i> Pelham, 10 Ves. 173 . . . . .	159
— <i>v.</i> Wright, 4 Bea. 427; 4 D. & J. 16; 7 W. R. 124, 350; 32 L. T. 290; 33 L. T. 35 . . . . .	26, 240, 335
Lindo <i>v.</i> Lindo, 1 Bea. 496 . . . . .	237
Lindow <i>v.</i> Fleetwood, 6 Sim. 152 . . . . .	50
Lindsell <i>v.</i> Thacker, 12 Sim. 178 . . . . .	22, 254
Lister <i>v.</i> Hodgson, 4 Eq. 36; 15 W. R. 547 . . . . .	31
— <i>v.</i> Lister, 6 Ves. 633 . . . . .	192
— <i>v.</i> Pickford, 34 Bea. 576; 34 L. J. Ch. 582 . . . . .	315
Littlehales <i>v.</i> Gascoyne, 3 B. C. C. 73 . . . . .	337
Livesey <i>v.</i> Harding, Tam. 463 . . . . .	181
— <i>v.</i> Livesey, 3 Russ. 287 . . . . .	231
Llewellyn, Re, 29 Bea. 171 . . . . .	93, 94, 97
Lloyd <i>v.</i> Baldwin, 1 Ves. Sen. 173 . . . . .	127, 129
— <i>v.</i> Banks, 3 Ch. 488; 36 L. J. Ch. 751; 16 W. R. 988 . . . . .	289, 290
— <i>v.</i> Cocker, 27 Bea. 645; 29 L. J. Ch. 513; 8 W. R. 252; 6 Jur. N. S. 336; 2 L. T. N. S. 9 . . . . .	179
— <i>v.</i> Lloyd, 7 Eq. 458; 38 L. J. Ch. 458; 20 L. T. N. S. 898; 17 W. R. 702 . . . . .	60
— <i>v.</i> Pughe, 8 Ch. D. 88; 42 L. J. Ch. 282; 28 L. T. N. S. 250 . . . . .	64
— <i>v.</i> Read, 1 P. W. 606 . . . . .	62
— <i>v.</i> Spillet, 2 Atk. 150 n. . . . .	67, 68
Loch <i>v.</i> Bagley, 4 Eq. 122; 15 W. R. 1103 . . . . .	50
Lock <i>v.</i> Lock, 2 Vern. 666 . . . . .	148
Locke <i>v.</i> Lomas, 5 D. G. & Sm. 329 . . . . .	125
Lockey <i>v.</i> Lockey, Pr. Ch. 518 . . . . .	311
Lockhart <i>v.</i> Reilly, 1 D. & J. 464; 27 L. J. Ch. 54 . . . . .	142, 220, 333
Locking <i>v.</i> Parker, 8 Ch. 35; 42 L. J. Ch. 257; 27 L. T. N. S. 635; 21 W. R. 113 . . . . .	187, 310
Lomax <i>v.</i> Lomax, 11 Ves. 48 . . . . .	172
— <i>v.</i> Ripley, 3 Sm. & G. 48; 3 W. R. 269; 24 L. J. Ch. 254; 24 L. T. N. S. 323 . . . . .	80, 82
Lombard <i>v.</i> Hickson, 13 Ir. Ch. R. 98 . . . . .	77
Londesborough <i>v.</i> Somerville, 23 L. J. Ch. 646 . . . . .	147



	PAGE
London Bridge Acts, Re, 13 Sim. 176 . . . . .	121
— Chartered Bank of Australia <i>v.</i> Lemprière, L. R. 4 P. C. 572; 42 L. J. P. C. 49; 29 L. T. N. S. 186; 21 W. R. 513 257, 260, 261, 262	
— and Provincial Bank <i>v.</i> Bogle, 7 Ch. D. 773 . . . . .	250
Lonergan <i>v.</i> Stourton, 11 W. R. 984 . . . . .	233
Long <i>v.</i> Hay, W. N. 1871, 134 . . . . .	325
— <i>v.</i> Rankin, Sugd. Pow. 895 . . . . .	119
— Re, 17 W. R. 218; 38 L. J. Ch. 125; 19 L. T. N. S. 672 . . . . .	109, 212
— <i>v.</i> Ricketts, 2 S. & S. 179 . . . . .	105
Longdon <i>v.</i> Simson, 12 Ves. 295 . . . . .	154
Longley <i>v.</i> Longley, 13 Eq. 133; 41 L. J. Ch. 168; 25 L. T. N. S. 736; 20 W. R. 227 . . . . .	60
Lonsdale <i>v.</i> Beckett, 4 D. G. & Sm. 73 . . . . .	212
— <i>v.</i> Church, Rolls 17 Dec., 1789 . . . . .	286
Lord <i>v.</i> Bunn, 2 Y. & C. C. C. 98 . . . . .	178
— <i>v.</i> Godfrey, 4 Madd. 455 . . . . .	92
— <i>v.</i> Wightwick, 4 D. M. & G. 803; 23 L. J. Ch. 235; 18 Jur. 253; 23 L. T. 249; 2 Eq. Rep. 349 . . . . .	95, 111, 113
Lorenz, Re, 1 Dr. & Sm. 401; 9 W. R. 567; 7 Jur. N. S. 402; 4 L. T. N. S. 501 . . . . .	108
Lovatt <i>v.</i> Knipe, 12 Ir. Eq. R. 124 . . . . .	74
Love <i>v.</i> Gaze, 8 Bea. 472 . . . . .	243
Lovell <i>v.</i> Knight, 3 Sim. 275 . . . . .	259
Loveridge <i>v.</i> Cooper, 3 Russ. 30 . . . . .	289
Lowe, Re, 30 Bea. 95 . . . . .	288
Lowry <i>v.</i> Fulton, 9 Sim. 115; 8 L. J. Ch. 314 . . . . .	14
Lowson <i>v.</i> Copeland, 2 B. C. C. 156 . . . . .	87, 114
Lowther <i>v.</i> Bentinck, 19 Eq. 166; 44 L. J. Ch. 197; 31 L. T. N. S. 719 . . . . .	178
— <i>v.</i> Condon, 2 Atk. 127 . . . . .	160
— <i>v.</i> Lowther, 13 Ves. 103 . . . . .	187
Loxley <i>v.</i> Heath, 1 D. F. & J. 489; 29 L. J. Ch. 313; 1 L. T. N. S. 471; 6 Jur. N. S. 262; 8 W. R. 314 . . . . .	46
Loyd <i>v.</i> Spillet, 2 Atk. 148; 3 P. W. 344 . . . . .	26, 59
Lucas <i>v.</i> King, 11 W. R. 818; 8 L. T. N. S. 623 . . . . .	177
— <i>v.</i> Lucas, 1 Atk. 271 . . . . .	32
— <i>v.</i> Williams, 4 D. F. & J. 436 . . . . .	90
Luckin <i>v.</i> Rushworth, 2 Ch. Rep. 59 . . . . .	75
Luders <i>v.</i> Anstey, 4 Ves. 501; Amb. 315 . . . . .	45
Luff <i>v.</i> Lord, 34 Bea. 220 . . . . .	184, 185
Lumb <i>v.</i> Milnes, 5 Ves. 520 . . . . .	263
Lunham <i>v.</i> Blundell, 27 L. J. Ch. 179; 6 W. R. 49; 4 Jur. N. S. 3. . . . .	98

	PAGE
Lupton v. White, 15 Ves. 432 . . . . .	99, 301
Lush, Re, 4 Ch. 591; 38 L. J. Ch. 650; 21 L. T. N. S. 376 . . . . .	266
Lushington v. Sewell, 1 Sim. 435 . . . . .	271
Luther v. Bianconi, 10 Ir. Ch. R. 194 . . . . .	87, 88, 259
Lyddon v. Ellison, 19 Bea. 565; 2 W. R. 690 . . . . .	49, 159
—— v. Lyddon, 14 Ves. 558 . . . . .	167
—— v. Moss, 4 D. & J. 104; 7 W. R. 433; 5 Jur. N. S. 637; 33 L. T. 170 . . . . .	313
Lynn v. Ashton, 1 R. & My. 190 . . . . .	248
Lysaght v. Edwards, 2 Ch. D. 499; 45 L. J. Ch. 554; 34 L. T. N. S. 787; 24 W. R. 778 . . . . .	21, 23, 72, 73, 224
Lyster v. Dolland, 1 Ves. Jun. 431 . . . . .	70
M. v. C., L. R. 2 P. & D. 414. . . . .	262
Maberly v. Turton, 14 Ves. 499 . . . . .	173, 174
McCarogher v. Whieldon, 3 Eq. 236; 36 L. J. Ch. 196 . . . . .	169
—— v. —— 34 Bea. 107 . . . . .	117
Macartney v. Blackwood, Ridg. L. & S. 602 . . . . .	191
McCormick v. Grogan, L. R. 4 H. L. 82 . . . . .	55, 79, 80
McCreight v. Foster, 5 Ch. 604 . . . . .	72
McDermott v. Kealy, 3 Russ. 264 n. . . . .	173
McDonald v. Hanson, 12 Ves. 277 . . . . .	120
Macdonald v. Irvine, 8 Ch. D. 101; 47 L. J. Ch. 494; 26 W. R. 381 . . . . .	91, 93
—— v. Walker, 14 Bea. 556 . . . . .	24
Macdonnell v. Harding, 7 Sim. 178 . . . . .	18
McDonnell v. Hesilrige, 16 Bea. 346; 1 W. R. 71; 22 L. J. Ch. 342; 16 Jur. 1118 . . . . .	32, 36
McFadden v. Jenkyns, 1 Ha. 461; 1 Ph. 153 . . . . .	25, 29, 33
McGachen v. Dew, 15 Bea. 84 . . . . .	87, 331, 335
McHardy v. Hitchcock, 11 Bea. 75 . . . . .	276
McHenry v. Davies, 6 Eq. 90, 462; 10 Eq. 88; 39 L. J. Ch. 866; 22 L. T. N. S. 643; 18 W. R. 855 . . . . .	260, 261, 264
Macintosh, Re, 42 L. J. Ch. 208 . . . . .	110
McKay's case, 2 Ch. D. 1; 45 L. J. Ch. 148; 33 L. T. N. S. 517 . . . . .	187
McKewan v. Sanderson, 15 Eq. 229; 20 Eq. 65; 42 L. J. Ch. 296; 28 L. T. N. S. 159 . . . . .	40
McKey, Ex parte, 1 B. & B. 405 . . . . .	179
Mackinnon v. Stewart, 1 Sim. N. S. 76 . . . . .	40
Mackreth v. Symmons, 15 Ves. 329 . . . . .	296
McLean v. Longlands, 5 Ves. 78 . . . . .	32
Macleod v. Annesley, 16 Bea. 600; 1 W. R. 250; 17 Jur. 603 . . . . .	140,
	141, 142

	PAGE
Macnab v. Whitbread, 17 Bea. 299 ; 1 W. R. 473 . . . . .	53
Macnamara v. Carey, Ir. R. 1 Eq. 9 . . . . .	89
Macnichol, Re, 19 Eq. 81 ; 31 L. T. N. S. 566 ; 23 W. R. 67 . . . . .	245
Macoubrey v. Jones, 2 K. & J. 684 . . . . .	158
Macpherson v. Macpherson, 1 McQ. 243 ; 16 Jur. 847 . . . . .	97
McPherson v. Watt, 3 App. Ca. 254 . . . . .	182, 189
McVeagh, Re, V. C. W., 25 May, 1861 . . . . .	109
Maddison v. Andrew, 1 Ves. Sen. 57 . . . . .	103
Magdalen College v. Attorney-General, 6 H. L. C. 189 . . . . .	311
Magrath v. Morehead, 12 Eq. 491 ; 41 L. J. Ch. 120 ; 24 L. T. N. S. 868 . . . . .	51, 85
Mahon v. Savage, 1 Sch. & L. 111 . . . . .	103
Maitland v. Bateman, 10 Bea. 415 . . . . .	325
Major v. Lansley, 2 R. & M. 355 . . . . .	258
Malcolm v. Charlesworth, 1 Keen. 63 . . . . .	291
Malden v. Menill, 2 Atk. 8 . . . . .	161
Malim v. Keighley, 2 Ves. Jun. 333 . . . . .	53, 57
Manby v. Bewicke, 3 K. & J. 369 . . . . .	322
Manners v. Furze, 11 Bea. 30 . . . . .	274
Manning v. Gill, 13 Eq. 485 ; 26 L. T. N. S. 14 ; 20 W. R. 357 . . . . .	31, 85
Mansell v. Mansell, 2 P. W. 681 . . . . .	295
Manser v. Dix, D. M. & G. 703 . . . . .	124
Mansfield v. Childerhouse, 4 Ch. D. 82 ; 46 L. J. Ch. 30 ; 35 L. T. N. S. 590 ; 25 W. R. 68 . . . . .	193
—— v. Ogle, 4 D. & J. 41 ; 7 W. R. 423 ; 33 L. T. 84 ; 28 L. J. Ch. 422 ; 5 Jur. N. S. 419 . . . . .	284
—— v. Shaw, 3 Mad. 100 . . . . .	279
Manson v. Baillie, 2 Macq. 80 . . . . .	197
Mant v. Leith, 15 Bea. 524 . . . . .	143
Mara v. Manning, 2 J. & L. 311 . . . . .	259
March v. Russell, 3 M. & Cr. 31 . . . . .	320, 329
Marcon, Re, W. N. 1871, 148 . . . . .	99
Mare v. Sandford, 1 Giff. 288 . . . . .	40
Margetts v. Barringer, 7 Sm. 482 . . . . .	255
Marker v. Marker, 9 Ha. 16 . . . . .	318
Marler v. Tommas, 17 Eq. 8 ; 43 L. J. Ch. 73 ; 22 W. R. 25 . . . . .	30, 31
Marriott, v. Kinnersley, Tam. 470 . . . . .	326
—— Re, W. N. 1868, 215 . . . . .	213
Marryat v. Marryat, 23 L. J. Ch. 876 . . . . .	275
—— v. Marryat, 28 Bea. 224 . . . . .	333
—— v. Townly, 1 Ves. Sen. 101 . . . . .	48, 50
Marsden v. Kent, 5 Ch. D. 598 ; 46 L. J. Ch. 497 ; 37 L. T. N. S. 48 ; 25 W. R. 522 . . . . .	89, 114

	PAGE
Marsh, Ex parte, 1 Mad. 148 . . . . .	186
Marshal v. Crutwell, 20 Eq. 328 ; 44 L. J. Ch. 504 . . . . .	64
Marshall v. Bousfield, 2 Mad. 166 . . . . .	4
—— v. Bremner, 2 Sm. & G. 237 ; 2 W. R. 320 . . . . .	93
—— v. Crowther, 2 Ch. D. 199 . . . . .	96, 115
—— v. Holloway, 2 Swans. 432 . . . . .	152, 154, 172, 198, 200, 202
—— v. Sladden, 4 D. G. & Sm. . . . .	111
—— v. ——— 7 Ha. 428 . . . . .	303
Martin, Ex parte, 19 Ves. 491 . . . . .	218
—— v. Laverton, 9 L. R. Eq. 563 ; 39 L. J. Ch. 216 ; 22 L. T. N. S. 700 ; 18 W. R. 561 . . . . .	22
—— v. Martin, 1 Eq. 369 . . . . .	173, 177
—— v. ——— 2 R. & My. 524 . . . . .	245
—— v. Mitchell, 2 J. & W. 425 . . . . .	118
—— v. Persse, 1 Moll. 146 . . . . .	11
—— v. Powning, 4 Ch. 356 ; 38 L. J. Ch. 218 ; 20 L. T. N. S. 133 ; 17 W. R. 386 . . . . .	188
—— Re, M. R. 28 Dec. 1859 . . . . .	110
—— v. Sedgwick, 9 Bea. 333 . . . . .	289
Martyn v. Blake, 3 D. & W. 125 . . . . .	284
Maskelyne v. Russell, W. N. 1869, 184 . . . . .	89
Mason v. Mason, 1 R. 5 Eq. 288 . . . . .	49, 50
—— v. Morley, 34 Bea. 475 . . . . .	99
Massey v. Banner, 1 J. & W. 241 . . . . .	99, 302
—— v. Massey, 2 J. & H. 728 ; 11 W. R. 19 ; 32 L. J. Ch. 13 ; 1 N. R. 15 ; 7 L. T. N. S. 311 . . . . .	328
—— v. Parker, 2 M. & K. 174 . . . . .	255
Massy v. Lloyd, 10 H. L. C. 248 . . . . .	162
—— v. Rowen, L. R. 4 H. L. 288 ; 23 L. T. N. S. 141 . . . . .	253, 254
Master v. De Croismar, 11 Bea. 184 . . . . .	146
Matheson, Re, 1 D. M. & G. 448 . . . . .	139
Mathew v. Brise, 14 Bea. 341 . . . . .	198, 311
Mathews v. Keble, 3 Ch. 696 ; 37 L. J. Ch. 657 ; 16 L. T. N. S. 832 ; 15 W. R. 1193 . . . . .	154, 155, 156
Mathias v. Mathias, 3 Sm. & G. 555 ; 32 L. T. N. S. 25 ; 4 Jur. N. S. 780 . . . . .	145, 305
Mather v. Priestman, 9 Sim. 352 . . . . .	112
Matson v. Denis, 12 W. R. 596 . . . . .	69, 70
Matthaei v. Galitzin, 18 Eq. 349 ; 43 L. J. Ch. 536 ; 30 L. T. N. S. 455 ; 22 W. R. 700 . . . . .	245, 246
Matthison v. Clarke, 3 Drew. 3 ; 3 W. R. 2 ; 24 L. J. Ch. 202 ; 24 L. T. 105 ; 3 Eq. Rep. 127 . . . . .	197
Matthewman, Re, 3 Eq. 781 ; 36 L. J. Ch. 90 ; 15 L. T. N. S. 266 ; 15 W. R. 146 . . . . .	262

	PAGE
Matthews v. Bagshaw, 14 Bea. 126 n. . . . .	199
— v. Brise, 6 Bea. 239 . . . . .	99, 100, 132
— v. Paul, 3 Swans. 328 . . . . .	159
— Re, 26 Bea. 463 ; 7 W. R. 224 ; 28 L. J. Ch. 295 ; 5 Jur. N. S. 104 ; 32 L. T. 289 . . . . .	216
Maundrell v. Maundrell, 10 Ves. 260 . . . . .	297, 299
Maw v. Pearson, 28 Bea. 196 . . . . .	303
Mawhood v. Milbanke, 15 Bea. 36 . . . . .	264
Maxfield v. Burton, 17 Eq. 15 ; 43 L. J. Ch. 46 ; 29 L. T. N. S. 571 ; 22 W. R. 148 . . . . .	298
Maxwell v. Ashe, 1 B. C. C. C. 444 n. . . . .	77
May v. May, 33 Bea. 81 . . . . .	63, 67
Mayd v. Field, 3 Ch. D. 587 ; 45 L. J. Ch. 699 ; 34 L. T. N. S. 614 ; 24 W. R. 660 . . . . .	169, 253, 261
Mayhew v. Middleditch, 1 B. C. C. 162 . . . . .	163, 166
Mayn v. Mayn, 5 Eq. 150 . . . . .	46, 50
Meacher v. Young, 2 M. & K. 490 . . . . .	173
Mead v. Orrery, 3 Atk. 237 . . . . .	274, 294, 298
Medworth v. Pope, 27 Bea. 71 . . . . .	83
Meggison v. Moore, 2 Ves. Jun. 630 . . . . .	53, 54
Mehrtens v. Andrews, 3 Bea. 72 . . . . .	320
Meinertzhagen v. Davis, 1 Coll. 335 . . . . .	212
Melling v. Leak, 16 C. B. 652 . . . . .	315
Mellish v. Mellish, 1 S. & S. 145 . . . . .	311
Mendes v. Guedalla, 2 J. & H. 259 ; 31 L. J. Ch. 561 ; 10 W. R. 482 . . . . .	100, 240
Mennard v. Welford, 1 Sm. & G. 426 . . . . .	210
Mercer v. Hall, 4 B. C. C. 326 . . . . .	104
Meredith v. Heneage, 1 Sim. 542 ; 10 Price, 230 . . . . .	52, 53, 55, 56
Merest v. Murray, 14 L. T. N. S. 321 . . . . .	280
Merry v. Ryves, 1 Ed. 1 . . . . .	166
Merryweather v. Jones, 4 Giff. 509 . . . . .	84
Mertins v. Joliffe, Amb. 311 . . . . .	294, 296
Mesgrett v. Mesgrett, 2 Vern. 580 . . . . .	104
Messeena v. Carr, 9 Eq. 260 ; 39 L. J. Ch. 216 ; 18 W. R. 415 ; 22 L. T. 3 . . . . .	15, 102
Methold v. Turner, 4 D. G. & Sm. 249 . . . . .	177
Meure v. Meure, 2 Atk. 265 . . . . .	49
Meux v. Bell, 1 Ha. 73 . . . . .	291
Mews v. Mews, 15 Bea. 533 . . . . .	32
Meyer v. Montriou, 4 Bea. 343 . . . . .	276
— v. Simonsen, 5 D. G. & Sm. 723 . . . . .	93, 94, 97
Meyrick v. Laws, 34 Bea. 59 . . . . .	144
Michael, Re, W. N. 1877, 134 . . . . .	267

	PAGE
Michell <i>v.</i> Michell, 4 Bea. 549 . . . . .	165
Middleton <i>v.</i> Chichester, 6 Ch. 152 ; 40 L. J. Ch. 237 . . . . .	277, 278
—— <i>v.</i> Dodswell, 13 Ves. 269 . . . . .	272
—— <i>v.</i> Losh, 1 Sm. & G. 61 . . . . .	155
—— <i>v.</i> Pollock, 4 Ch. D. 49 ; 46 L. J. Ch. 39 ; 35 L. T. N. S. 608 ; 25 W. R. 94 . . . . .	303
—— <i>v.</i> Reay, 7 Ha. 106 . . . . .	211
Mignan <i>v.</i> Parry, 31 Bea. 211 ; 10 W. R. 812 ; 8 Jur. N. S. 634 . . . . .	47
Miles, Re, 27 Bea. 579 ; 8 W. R. 54 ; 29 L. J. Ch. 47 ; 5 Jur. N. S. 1236 ; 1 L. T. N. S. 420 . . . . .	132, 143
Mill <i>v.</i> Hill, 3 H. L. C. 828 . . . . .	75, 77, 78
Millard <i>v.</i> Eyre, 2 Ves. Jun. 94 . . . . .	216
Miller <i>v.</i> Harrison, I. R. 5 Eq. 324 . . . . .	33
—— <i>v.</i> Miller, 13 Eq. 263 ; 41 L. J. Ch. 291 ; 20 W. R. 234 . . . . .	93, 94
—— <i>v.</i> Priddon, 1 D. M. & G. 335 . . . . .	214
Milligan <i>v.</i> Mitchell, 1 M. & K. 452 . . . . .	279
Mills <i>v.</i> Banks, 3 P. W. 1, 7 . . . . .	122, 164
—— <i>v.</i> Dugmore, 30 Bea. 104 . . . . .	116
—— <i>v.</i> Hanson, 8 Ves. 68 . . . . .	276
—— <i>v.</i> Mills, 7 Sim. 501 . . . . .	92
—— <i>v.</i> Osborne, 7 Sim. 30 . . . . .	88, 89, 137
—— Re, 7 W. R. 372 . . . . .	32, 34
Milroy <i>v.</i> Lord, 4 D. F. & J. 274 ; 31 L. J. Ch. 798 ; 6 L. T. N. S. 875 ; 8 Jur. N. S. 808 . . . . .	27, 28, 29
Milsingtoun <i>v.</i> Mulgrave, 3 Mad. 491 . . . . .	149
Milsinton <i>v.</i> Portmore, 5 Mad. 471 . . . . .	151
Minet <i>v.</i> Leman, 7 D. M. & G. 340 . . . . .	116, 146
Minors <i>v.</i> Battison, 1 App. Ca. 428 . . . . .	144
Minton <i>v.</i> Kirwood, 3 Ch. 619 ; 37 L. J. Ch. 606 ; 18 L. T. N. S. 781 ; 16 W. R. 991 . . . . .	122
Mockett, Re, Johns. 628 ; 8 W. R. 235 ; 29 L. J. Ch. 294 ; 6 Jur. N. S. 142 ; 1 L. T. N. S. 142 . . . . .	108, 109
Moggeridge <i>v.</i> Grey, Nels. 42 . . . . .	204
Mole <i>v.</i> Mole, 1 Dick. 310 . . . . .	173
Molony <i>v.</i> Kennedy, 10 Sim. 254 . . . . .	251
—— <i>v.</i> Kernan, 2 Dr. & War. 31 . . . . .	186
Molyneux, Re, I. R. 6 Eq. 411 . . . . .	256
Monckton <i>v.</i> Braddell, I. R. 7 Eq. 30 . . . . .	294, 297
Montefiore <i>v.</i> Brown, 7 H. L. C. 241 . . . . .	38, 41
—— Ex parte, De G. 171 ; 9 Jur. 562 . . . . .	219
—— <i>v.</i> Guedalla, W. N. 1868, 87 . . . . .	136
Montford <i>v.</i> Cadogan, 17 Ves. 485 ; 19 Ves. 633 . . . . .	12, 14, 149, 150, 151, 330, 334, 335

	PAGE
Montesquieu v. Sandys, 18 Ves. 302 . . . . .	189, 190
Montgomerie v. Wauchope, 4 Dow. 131 . . . . .	286
Monypenny v. Bristow, 2 R. & M. 135 . . . . .	323
Moody v. Matthews, 7 Ves. 174 . . . . .	77
— v. Walters, 16 Ves. 302 . . . . .	295
Moons v. De Bernales, 1 Russ. 301 . . . . .	219
Moore v. Darton, 4 D. G. & Sm. 517 . . . . .	28
— v. Frowd, 3 M. & Cr. 45 . . . . .	197, 199
— v. Moore, 1 Coll. 54 . . . . .	267
— v. Moore, 18 Eq. 474 ; 43 L. J. Ch. 617 ; 30 L. T. N. S. 752 ; 22 W. R. 729 . . . . .	29, 32
— v. Morris, 4 Drew. 33 . . . . .	250, 266
— v. Petchell, 22 Bea. 172 . . . . .	39
— v. Walter, 8 L. T. N. S. 448 ; 11 W. R. 713 . . . . .	146
— v. Webster, 3 Eq. 267 ; 36 L. J. Ch. 429 ; 15 L. T. N. S. 460 ; 15 W. R. 167 . . . . .	271
Moorecroft v. Dowding, 2 P. W. 314 . . . . .	25
Moravian Society, Re, 26 Bea. 101 ; 6 W. R. 851 . . . . .	210
Mores v. Huish, 5 Ves. 692 . . . . .	258
Morgan v. Malleson, 10 Eq. 475 ; 39 L. J. Ch. 680 ; 18 W. R. 1125 . . . . .	27
— v. Minett, 6 Ch. D. 638 ; 36 L. T. N. S. 948 ; 25 W. R. 744 . . . . .	189, 190
— v. Morgan, 10 Eq. 99 ; 39 L. J. Ch. 493 ; 22 L. T. N. S. 595 ; 18 W. R. 744 . . . . .	323
— v. Morgan, 14 Bea. 72 . . . . .	91, 93, 96
— v. — 20 L. J. Ch. 109 . . . . .	155
— v. — 5 Mad. 408 . . . . .	271
— Re, 9 Eq. 587 . . . . .	268
— v. Stephens, 3 Giff. 226 ; 7 Jur. N. S. 701 ; 4 L. T. N. S. 613 . . . . .	241
— v. Swansea Urban Sanitary Authority, W. N. 1878, 179 . . . . .	225
— v. Worthington, 38 L. T. N. S. 443 . . . . .	26
Moriarty v. Martin, 3 Ir. Ch. R. 26 . . . . .	53
Morice v. Durham, Bishop of, 10 Ves. 521 . . . . .	56, 59
Morley v. Bird, 3 Ves. 631 . . . . .	69
— v. Morley, 2 Ch. Ca. 2 . . . . .	98
Morrell v. Cowan, 7 Ch. D. 151 ; 47 L. J. Ch. 173 ; 37 L. T. N. S. 586 ; 26 W. R. 90 . . . . .	262
Morris v. Barrett, 3 Y. & J. 384 . . . . .	70, 71
— v. Debenham, 2 Ch. D. 540 ; 34 L. T. N. S. 205 ; 24 W. R. 636 . . . . .	117, 118
— v. Livie, 1 Y. & C. C. C. 380 . . . . .	335
— v. Preston, 7 Ves. 547 . . . . .	209

	PAGE
Morse v. Royal, 12 Ves. 355 . . . . .	193, 194, 318
Mortimer v. Ireland, 11 Jur. 721 ; 16 L. J. Ch. 416 . . . . .	24
— v. Picton, 12 W. R. 292 . . . . .	135
— v. Watts, 14 Bea. 624. . . . .	149
Mortimore v. Mortimore, 4 D. & J. 472 ; 7 W. R. 601 ; 33 L. T. 311 . . . . .	143
Mortlock v. Buller, 10 Ves. 292 . . . . .	111, 113, 146
Mosley v. Mosley, 5 Ves. 248 . . . . .	161, 165
— v. Ward, 11 Ves. 581 . . . . .	285
Moss v. Cooper, 1 J. & H. 352 . . . . .	81
Mostyn v. Mostyn, W. N. 1878, 180 . . . . .	166, 172
Mousley v. Carr, 4 Bea. 49 . . . . .	283
Moyle v. Moyle, 2 R. & M. 710 . . . . .	98, 99, 238
Muckleston v. Brown, 6 Ves. 69 . . . . .	80, 81
Mucklow v. Fuller, Jac. 198 . . . . .	13, 239
Muggeridge, Re, Johns. 625 ; 8 W. R. 234 ; 29 L. J. Ch. 288 ; 6 Jur. N. S. 192 ; 1 L. T. N. S. 436 . . . . .	109
Mulhallen v. Marum, 3 Dr. & W. 317 . . . . .	74
Mullings v. Trinder, 10 Eq. 449 ; 39 L. J. Ch. 833 ; 18 W. R. 1186 . . . . .	120
Mulvany v. Dillon, 1 B. & B. 409 . . . . .	74, 185
Mumford v. Stohwasser, 18 Eq. 556 ; 43 L. J. Ch. 694 ; 30 L. T. N. S. 859 ; 22 W. R. 833 . . . . .	295, 297
Mumma v. Mumma, 2 Vern. 19 . . . . .	62
Munch v. Cockerell, 5 M. & Cr. 179 . . . . .	237
Mundy v. Howe, 4 B. C. C. 224 . . . . .	173
Murless v. Franklin, 1 Swans. 13 . . . . .	62, 65, 66
Murphy v. Donnelly, 1 R. 4 Eq. 111 . . . . .	7
— v. O'Shea, 2 J. & L. 422 . . . . .	187
Murray v. Barlee, 2 M. & K. 209 . . . . .	257, 262, 263
— v. Pinkett, 12 Cl. & F. 764 . . . . .	218
— Re, W. N. 1868, 195 . . . . .	110
Murthwaite v. Jenkinson, 2 B. & C. 357 ; 3 D. & R. 765 . . . . .	4
Musters v. Wright, 2 D. G. & Sm. 777 . . . . .	251
Mutlow v. Bigg, 18 Eq. 246 ; 1 Ch. D. 385 ; 45 L. J. Ch. 282 ; 22 W. R. 469 . . . . .	308
Myler v. Fitzpatrick, 6 Mad. 360 . . . . .	303
NAB v. Nab, 10 Mod. 404 . . . . .	52
Nagle, Re, 6 Ch. D. 104 . . . . .	118
Nail v. Punter, 4 Sim. 474 ; 5 Sim. 555 . . . . .	261, 265, 334
Nandike v. Wilkes, Gilb. 814 . . . . .	45
Nanney v. Williams, 22 Bea. 452 . . . . .	311, 323



	PAGE
Naylor <i>v.</i> Arnitt, 1 Russ. & My. 501 . . . . .	103
Neale <i>v.</i> Davies, 5 D. M. & G. 258 . . . . .	206
Needham, Re, 1 J. & L. 36 . . . . .	11, 13
Nelley, Re, W. N. 1877, 120; aff. <i>ibid.</i> 222 . . . . .	47
Nelson <i>v.</i> Booth, 3 D. & J. 119 . . . . .	328
—— <i>v.</i> ——— 5 W. R. 722 . . . . .	248
—— <i>v.</i> Bridport, 8 Bea. 547 . . . . .	245
—— <i>v.</i> Seaman, 1 D. F. & J. 368 . . . . .	205
Nesbitt <i>v.</i> Tredennick, 1 B. & B. 29 . . . . .	74, 76, 77
Nether Stowey Vicarage, Re, 17 Eq. 156; 29 L. T. N. S. 604; 22 W. R. 180 . . . . .	105
Nevil <i>v.</i> Saunders, 1 Vern. 415 . . . . .	3
New <i>v.</i> Bonaker, 4 Eq. 655; 36 L. J. Ch. 846; 15 W. R. 1131 . . . . .	246
—— <i>v.</i> Jones, 1 Macn. & G. 668 n. . . . .	196, 197, 201
Newcastle <i>v.</i> Lincoln, 3 Ves. 387; 12 Ves. 218 . . . . .	51
Newcomen <i>v.</i> Hassard, 4 Ir. Ch. R. 268 . . . . .	258
Newill <i>v.</i> Newill, 7 Ch. 253; 41 L. J. N. S. 432; 26 L. T. N. S. 175; 20 W. R. 308 . . . . .	57
Newlands <i>v.</i> Paynter, 10 Sim. 377; 4 M. & Cr. 408 . . . . .	247, 252
Newman, Re, 9 Ch. 681; 43 L. J. Ch. 702 . . . . .	105, 106
—— <i>v.</i> Warner, 1 Sim. N. S. 457 . . . . .	138
Newport <i>v.</i> Bryan, 5 Ir. Ch. R. 119 . . . . .	314, 333
—— <i>v.</i> Bury, 23 Bea. 30 . . . . .	202
Newton <i>v.</i> Askew, 11 Bea. 145 . . . . .	228
—— <i>v.</i> Bennet, 1 B. C. C. 362 . . . . .	286
—— <i>v.</i> Newton, 6 Eq. 135; 4 Ch. 143; 38 L. J. Ch. 145; 19 L. T. N. S. 588; 17 W. R. 238 . . . . .	295
—— Re, 3 D. G. & Sm. 584 . . . . .	198
Nicholls, In the goods of, L. R. 2 P. & D. 461 . . . . .	236
Nicholson <i>v.</i> Mulligan, 1 R. 3 Eq. 308 . . . . .	62, 66
—— <i>v.</i> Tutin, 2 K. & J. 18 . . . . .	37
—— <i>v.</i> Wright, 5 W. R. 431; 26 L. J. Ch. 312; 29 L. T. N. S. 52; 3 Jur. N. S. 313; 19 Jur. N. S. 1201 . . . . .	209
Nicloson <i>v.</i> Wordsworth, 2 Swans. 365 . . . . .	10
Nightingale <i>v.</i> Lawson, 1 B. C. C. 440 . . . . .	75, 148, 150
Noad <i>v.</i> Backhouse, 2 Y. & C. C. C. 529 . . . . .	273
Noble <i>v.</i> Edwardes, 5 Ch. D. 378; 37 L. T. N. S. 7 . . . . .	111
—— <i>v.</i> Meymott, 14 Bea. 471; 20 L. J. Ch. 612 . . . . .	11, 13, 208
Noel <i>v.</i> Henley, 7 Price, 241 . . . . .	97
—— <i>v.</i> Jones, 16 Sim. 311 . . . . .	180
Nokes <i>v.</i> Seppings, 2 Ph. 19 . . . . .	274, 275, 276
Norfolk <i>v.</i> Brown, Pr. Ch. 80 . . . . .	60
Norfolk's case, Duke of, 3 Ch. Ca. 5; 1 Vern. 164 . . . . .	152

	PAGE
Norris v. Chambers, 3 D. F. & J. 584; 29 Bea. 246; 30 L. J. Ch. 286; 7 Jur. N. S. 689; 9 W. R. 794; 4 L. T. N. S. 345	245
— Ex parte, 4 Ch. 280; 38 L. J. Bk. 5; 19 L. T. N. S. 755;	
17 W. R. 452 . . . . .	330
— v. Frazer, 15 Eq. 318; 21 W. R. 434 . . . . .	79, 81
— v. Le Neve, 3 Atk. 38 . . . . .	77
— v. Wright, 14 Bea. 303 . . . . .	135, 140, 141, 142
Northen v. Carnegie, 4 Drew. 587; 7 W. R. 481 . . . . .	58
Northumberland v. Egremont, 1 Ed. 435 . . . . .	159
Norton v. Turvill, 2 P. W. 144 . . . . .	260, 261
Norway v. Norway, 2 M. & K. 278 . . . . .	11
Notley v. Palmer, 11 Jur. N. S. 968 . . . . .	174, 176
OBEE v. Bishop, 1 D. F. & J. 137; 8 W. R. 102; 29 L. J. Ch. 148;	
6 Jur. N. S. 132; 1 L. T. N. S. 151 . . . . .	314
O'Brian v. Fitzgerald, 1 Ir. Ch. R. 293 . . . . .	140
O'Callaghan v. Cooper, 5 Ves. 117 . . . . .	162
Occleston v. Fullalove, 9 Ch. 147; 43 L. J. Ch. 297 . . . . .	83
Ockleston v. Heap, 1 D. G. & Sm. 640 . . . . .	23
O'Connor v. Haslam, 5 H. L. C. 170 . . . . .	39
Oddie v. Brown, 4 D. & J. 179; 7 W. R. 472; 5 Jur. N. S. 635; 33	
L. T. 174 . . . . .	152
O'Ferrall v. O'Ferrall, Ll. & G. (Plunk.) 79 . . . . .	149
Offen v. Harman, 1 D. F. & J. 253; 6 Jur. N. S. 487 . . . . .	118, 138
Offley v. Offley, Pr. Ch. 27 . . . . .	165
Oglander v. Oglander, 4 D. G. & Sm. 381 . . . . .	205
Ogle, Ex parte, 8 Ch. 711; 42 L. J. Bk. 99; 21 W. R. 938 . . . . .	88, 286
Okeden v. Okeden, 1 Atk. 550 . . . . .	164
O'Keefe v. Calthorpe, 1 Atk. 17 . . . . .	216
Oldham v. Litchfield, 2 Vern. 506 . . . . .	79
Oldin v. Samborn, 2 Atk. 15 . . . . .	189
Oliver v. Court, 8 Price, 166 . . . . .	114, 115, 120, 192, 195
Oram v. Richardson, W. N. 1877, 13 . . . . .	130
Ord, Ex parte, 2 Mont. & A. 724 . . . . .	219
— v. Noel, 5 Mad. 438 . . . . .	111, 112, 113
O'Reilly v. Alderson, 8 Ha. 104 . . . . .	210
— v. Walsh, I. R. 6 Eq. 555 . . . . .	308
Orme v. Wright, 3 Jur. 19 . . . . .	112
Orr v. Newton, 2 Cox, 277 . . . . .	90
Osborn, Re, 12 Eq. 392; 40 L. J. Ch. 706; 26 L. T. N. S. 151 . . . . .	210
— v. Osborne, 6 Ves. 455 . . . . .	206
Ottley v. Gilby, 8 Bea. 602 . . . . .	228
Otway-Cave v. Otway, 2 Eq. 725; 15 W. R. 6 . . . . .	168, 169

	PAGE
Owen <i>v.</i> Delamere, 15 Eq. 139 . . . . .	90
— <i>v.</i> Foulkes, 6 Ves. 630 n. . . . .	191
— <i>v.</i> Homan, 4 H. L. C. 997 . . . . .	261
— <i>v.</i> Williams, Amb. 734 . . . . .	74, 75
 PACKMAN AND MOSS, Re, 1 Ch. D. 214 ; 45 L. J. Ch. 54 ; 34 L. T. N. S. 110 ; 24 W. R. 170 . . . . .	21
Paddon <i>v.</i> Richardson, 7 D. M. & G. 563 ; 26 L. T. N. S. 33 ; 19 Jur. N. S. 1192 . . . . .	88, 91, 138
Page <i>v.</i> Adam, 4 Bea. 269 . . . . .	126, 127, 128
— <i>v.</i> Cooper, 16 Bea. 396 ; 1 W. R. 136 ; 20 L. T. N. S. 287 122, 123	
— <i>v.</i> Horne, 11 Bea. 233 . . . . .	35
— <i>v.</i> Way, 3 Bea. 20 . . . . .	178
Painter, Ex parte, 2 D. & C. 584 . . . . .	209
Palairet <i>v.</i> Carew, 32 Bea. 564 ; 9 Jur. N. S. 426 ; 11 W. R. 449 ; 8 L. T. N. S. 139 . . . . .	113, 207, 223
Palk <i>v.</i> Clinton, 12 Ves. 48 . . . . .	123
Palmer <i>v.</i> Flower, 13 Eq. 250 ; 41 L. J. Ch. 193 ; 25 L. T. N. S. 816 ; 20 W. R. 174 . . . . .	180
— <i>v.</i> Jones, 1 Vern. 144 . . . . .	327
— <i>v.</i> Mitchell, 2 M. & K. 672 n. . . . .	286
— <i>v.</i> Newell, 8 D. M. & G. 74 . . . . .	170
— <i>v.</i> Simmonds, 2 Drew. 225 ; 2 W. R. 313 . . . . .	53, 54
— <i>v.</i> Wakefield, 3 Bea. 227 . . . . .	181
— <i>v.</i> Wright, 10 Bea. 234 . . . . .	273
— <i>v.</i> Young, 1 Vern. 276 . . . . .	76
Pannell <i>v.</i> Hurley, 2 Coll. 241 . . . . .	294, 302
Papillon <i>v.</i> Voice, 2 P. W. 470 . . . . .	48
Pare <i>v.</i> Clegg, 29 Bea. 589 ; 30 L. J. Ch. 742 ; 7 Jur. N. S. 1136 ; 9 W. R. 795 ; 4 L. T. N. S. 669 . . . . .	309
Parker <i>v.</i> Bloxam, 20 Bea. 295 . . . . .	138
— <i>v.</i> Brooke, 8 Ves. 583 ; 9 Ves. 583 . . . . .	77, 247, 249, 299
— <i>v.</i> Carter, 4 Ha. 416 . . . . .	271
— <i>v.</i> McKenna, 10 Ch. 118 ; 44 L. J. Ch. 425 ; 31 L. T. N. S. 739 ; 23 W. R. 271 . . . . .	183, 187
— <i>v.</i> Manning, 7 T. R. 537 . . . . .	221
Parkes <i>v.</i> White, 11 Ves. 220 . . . . .	183, 184, 258, 267, 317
Parkinson <i>v.</i> Hanbury, 2 D. G. & Sm. 450 ; 8 W. R. 575 . . . . .	187
Parnell <i>v.</i> Hingston, 3 Sm. & G. 337 ; 4 W. R. 794 . . . . .	28, 34
Parry <i>v.</i> Warrington, 6 Mad. 155 . . . . .	147
Parsons <i>v.</i> Baker, 18 Ves. 476 . . . . .	53, 56
— <i>v.</i> Coke, 10 W. R. 641 . . . . .	172

	PAGE
Partington v. Reynolds, 4 Dr. 253 ; 6 W. R. 615 . . . . .	328
Pascoe v. Swan, 27 Bea. 508 . . . . .	323
Pashler v. Vincent, 8 Ch. D. 825 . . . . .	278
Passingham v. Sherborn, 9 Bea. 424 . . . . .	185, 215
Paterson v. Murphy, 11 Ha. 92 . . . . .	33, 42
Pattison v. Hawkesworth, 10 Bea. 375 . . . . .	316
Paul v. Compton, 8 Ves. 380 . . . . .	53
Pawlett, Ex parte, 1 Ph. 570 . . . . .	135
Payne v. Evens, 18 Eq. 356 . . . . .	317, 318
— Ex parte, 2 Y. & C. C. C. 636 . . . . .	54
— v. Little, 26 Bea. 1 . . . . .	249
— v. Mortimer, 4 D. & J. 447 . . . . .	30
Peacham v. Daw, 6 Mad. 98 . . . . .	275
Peacock v. Monk, 2 Ves. Sen. 190 . . . . .	257, 261
Peacocke v. Pares, 2 Keen. 689 . . . . .	158
Pearce v. Gardner, 10 Ha. 287 ; 1 W. R. 98 . . . . .	116
— v. Loman, 3 Ves. 135 . . . . .	166, 168
— v. Pearce, 22 Bea. 248 ; 25 L. J. Ch. 893 ; 28 L. T. 34 ; 2 Jur. N. S. 843 . . . . .	14, 207
Pearse v. Baron, Jac. 158 . . . . .	50
— v. Green, 1 J. & W. 135 . . . . .	228, 284
— v. Pearse, W. N. 1877, 120 . . . . .	255
Pearson v. Amicable Assurance Off., 27 Bea. 229 . . . . .	28
— v. Benson, 28 Bea. 598 . . . . .	186
— v. Lane, 17 Ves. 101 . . . . .	114
— v. Pearson, 1 Sch. & L. 10 . . . . .	115
— Re, 21 W. R. 401 . . . . .	109
Peatfield v. Benn, 17 Bea. 522 . . . . .	205
Pechel v. Fowler, 2 Anst. 549 . . . . .	279
Peckham v. Taylor, 31 Bea. 250 ; 6 L. T. N. S. 487 . . . . .	25, 33, 34
Peers v. Ceeley, 15 Bea. 211 . . . . .	232
Peillon v. Brooking, 25 Bea. 218 ; 4 L. T. N. S. 731 . . . . .	133, 267
Pell v. De Winton, 2 D. & J. 13 ; 27 L. J. Ch. 230 ; 4 Jur. N. S. 225 ; 6 W. R. 179 ; 30 L. T. 252 . . . . .	125
Pelly v. Bascombe, 4 Giff. 390 ; 34 L. J. Ch. 233 ; 11 W. R. 66 ; 2 N. R. 263 . . . . .	311
Pember v. Mathers, 1 B. C. C. 52 . . . . .	294
Pemberton v. McGill, 1 Dr. & Sm. 266 ; 3 W. R. 340 ; 3 Eq. Rep. 571 ; 8 W. R. 290 ; 29 L. J. Ch. 499 . . . . .	266
Penfold v. Bouch, 4 Ha. 271 . . . . .	223
— v. Mould, 4 Eq. 562 ; 36 L. J. Ch. 981 ; 17 L. T. N. S. 59 ; 15 W. R. 1196 . . . . .	32
Pennell v. Deffell, 4 D. M. & G. 372 ; 1 W. R. 499 . . . . .	99, 218, 300, 302, 303

	PAGE
Pennell <i>v.</i> Dysart, 27 Bea. 542 . . . . .	227, 234
— <i>v.</i> Home, 3 Drew. 337 . . . . .	322
Penny <i>v.</i> Allen, 7 D. M. & G. 426 ; 5 W. R. 303 ; 26 L. J. Ch. 495 ; 29 L. T. N. S. 41 ; 3 Jur. N. S. 530 . . . . .	313
Peppercorn <i>v.</i> Wayman, 5 D. G. & Sm. 230 ; 21 L. J. Ch. 827 . . . . .	12
Perfect <i>v.</i> Curzon, 5 Mad. 442 . . . . .	161
Perkes, <i>Ex parte</i> , 3 M. D. & D. 385 . . . . .	188
Perrot <i>v.</i> Perrot, 3 Atk. 94 . . . . .	222
Perry <i>v.</i> Phelps, 4 Ves. 116 . . . . .	305
— <i>v.</i> Shipway, 1 Giff. 1 ; 7 W. R. 406, 574 ; 5 Jur. N. S. 353 ; 33 L. T. 102, 251 . . . . .	15
Peter <i>v.</i> Nicolls, 11 Eq. 391 ; 24 L. T. N. S. 381 ; 19 W. R. 618 . . . . .	36
Peterson <i>v.</i> Peterson, 3 Eq. 111 ; 36 L. J. Ch. 101 ; 15 W. R. 164 . . . . .	231
Petre, <i>Ex parte</i> , 7 Ves. 403 . . . . .	174
— <i>v.</i> Petre, 1 Dr. 371 ; 1 W. R. 139, 362 ; 21 L. T. N. S. 136 . . . . .	75, 307
Pett <i>v.</i> Fellows, 1 Swans. 561 . . . . .	172
Pettward <i>v.</i> Prescott, 7 Ves. 541 . . . . .	323
Petts <i>v.</i> Lee, 4 Vin. Abr. 131, pl. 8 . . . . .	256
Petty <i>v.</i> Styward, 1 Ch. Rep. 31 . . . . .	69
Peyton, <i>Re</i> , 7 Eq. 463 ; 38 L. J. Ch. 477 ; 20 L. T. N. S. 728 . . . . .	109, 143, 146
— 10 W. R. 515 ; 30 Bea. 252 . . . . .	109, 112
Phayre <i>v.</i> Peree, 3 Dow. 116 . . . . .	305
Phelps, <i>Re</i> , 9 Mod. 357 . . . . .	215
Phené, <i>Re</i> , 5 Ch. 139 ; 39 L. J. Ch. 316 ; 22 L. T. N. S. 111 ; 18 W. R. 303 . . . . .	235
Philbrick, <i>Re</i> , 34 L. J. Ch. 368 ; 12 L. T. N. S. 261 ; 11 Jur. N. S. 558 ; 13 W. R. 517 . . . . .	232, 233
Philips <i>v.</i> Philips, 3 Ha. 281 . . . . .	39, 40
Phillipo <i>v.</i> Munnings, 2 M. & Cr. 309 . . . . .	13, 240, 307, 308
Phillips <i>v.</i> Edmunds, 3 East, 440 . . . . .	118
— <i>Ex parte</i> , 2 Deac. 334 ; 6 L. J. Bank. 74 . . . . .	15
— <i>v.</i> James, 2 Dr. & Sm. 404, aff. ; 13 W. R. 934 . . . . .	46
— <i>v.</i> Phillips, 1 M. & K. 649 . . . . .	59
— <i>v.</i> — Kay, 40 ; 23 L. J. Ch. 7 ; 18 Jur. 69 ; 22 L. T. 236 ; 2 Eq. Rep. 302 . . . . .	179
— <i>v.</i> — 4 D. F. & J. 216 ; 31 L. J. Ch. 321 ; 5 L. T. N. S. 655 ; 8 Jur. N. S. 145 ; 10 W. R. 236 . . . . .	295
Phillipson <i>v.</i> Gatty, 7 Ha. 516 . . . . .	136, 141, 319
— <i>v.</i> Kerry, 32 Bea. 628 ; 11 W. R. 1034 . . . . .	31
Phipps <i>v.</i> Lovegrove, 16 Eq. 80 ; 42 L. J. Ch. 892 ; 28 L. T. N. S. 584 ; 21 W. R. 590 . . . . .	234, 291, 292
Pickard <i>v.</i> Anderson, 13 Eq. 608 ; 26 L. T. N. S. 725 . . . . .	137

	PAGE
Pickard v. Hine, 5 Ch. 274 . . . . .	260, 262, 264
Pickering v. Pickering, 4 M. & Cr. 289 . . . . .	91, 92, 93
— v. Stamford, 2 Ves. Jun. 283 . . . . .	316, 317
— v. Vowles, 1 B. C. C. 197 . . . . .	75, 149
Pickup v. Atkinson, 4 Ha. 625 . . . . .	92
Pidgeon v. Spencer, W. N. 1867, 87 . . . . .	92
Pierce v. Brady, 23 Bea. 64 . . . . .	289
Piercy v. Roberts, 1 M. & K. 4 . . . . .	84, 177
Pierson v. Garnet, 2 B. C. C. 38, 226 . . . . .	53, 56, 57, 103, 159
Piety v. Stace, 4 Ves. 620 . . . . .	283, 286
Piggott v. Green, 6 Sim. 72 . . . . .	200
Pilcher v. Rawlins, 7 Ch. 259; 41 L. J. Ch. 435; 25 L. T. N. S. 921; 20 W. R. 281 . . . . .	293, 294, 297
Pilkington v. Boughey, 12 Sim. 114 . . . . .	53
Pilling v. Armitage, 12 Ves. 80 . . . . .	294
Pince v. Beattie, 9 Jur. N. S. 1119; 11 W. R. 979; 2 N. R. 546 . . . . .	143
Pink v. De Thuisey, 2 Mad. 157 . . . . .	180
Pinkett v. Wright, 2 Ha. 120; 12 Cl. & F. 764 . . . . .	99, 218, 304, 327
Pisani v. Att.-Gen. Gibraltar, L. R. 5 P. C. 517 . . . . .	189, 190, 191
Platt v. Routh, 3 Bea. 257; 6 M. & W. 756, 791; 10 Cl. & F. 257 . . . . .	233
Playford v. Hoare, 3 Y. & J. 175 . . . . .	8
Plenty v. West, 16 Bea. 356 . . . . .	212
Plumb v. Fluitt, 2 Anst. 438 . . . . .	294, 298
Plumer v. Gregory, 18 Eq. 627; 43 L. J. Ch. 616 . . . . .	330
Poad v. Watson, 6 E. & B. 606; 25 L. J. Q. B. 396; 2 Jur. N. S. 1135; 3 W. R. 488 . . . . .	5
Pocock v. Reddington, 5 Ves. 794 . . . . .	136, 285
Pole v. Pole, 1 Ves. Sen. 76 . . . . .	63
— v. — 2 Dr. & Sm. 420 . . . . .	73
Pollard v. Doyle, 1 Dr. & Sm. 319; 9 W. R. 28; 6 Jur. N. S. 1139; 3 L. T. N. S. 432 . . . . .	196
Pollock v. Croft, 1 Mer. 181 . . . . .	104
Pomfret v. Windsor, 2 Ves. Sen. 487 . . . . .	166
Pool-Bathurst, Re, 2 Sm. & Giff. 173; 18 Jur. 568; 20 L. T. 218 . . . . .	212
Pooley v. Quilter, 4 Drew. 189; 2 D. & J. 327; 27 L. J. Ch. 374; 4 Jur. N. S. 345; 6 W. R. 402; 31 L. T. 64 . . . . .	182, 183, 184, 188
Pope v. Pope, 10 Sim. 1 . . . . .	55
Porter v. Baddeley, 5 Ch. D. 542 . . . . .	91, 93
— Re, 25 L. J. Ch. 482 . . . . .	212
Portlock v. Gardner, 1 Ha. 594 . . . . .	310, 318
Portsmouth v. Fellows, 5 Mad. 450 . . . . .	217
Pott v. Todhunter, 2 Coll. 76 . . . . .	35
Poulet v. Poulet, 1 Vern. 204 . . . . .	167, 168

	PAGE
Poulett <i>v.</i> Hood, 5 Eq. 115; 37 L. J. Ch. 224; 17 L. T. N. S. 486; 16 W. R. 323 . . . . .	110, 121
Poulson, <i>Ex parte</i> , De G. 79 . . . . .	220
Powdrell <i>v.</i> Jones, 2 Sm. & G. 407; 3 W. R. 32; 24 L. J. Ch. 123; 24 L. T. 88 . . . . .	270
Powell <i>v.</i> Evans, 5 Ves. 838 . . . . .	87, 114, 137
— <i>v.</i> Merrett, 1 Sm. & G. 383; 1 W. R. 243; 22 L. J. Ch. 408; 17 Jur. N. S. 449; 21 L. T. N. S. 98 . . . . .	243
— <i>v.</i> Price, 2 P. W. 535 . . . . .	45
— <i>Re</i> , 10 Ha. 134 . . . . .	284
Powis <i>v.</i> Burdett, 9 Ves. 428 . . . . .	161
Powys <i>v.</i> Mansfield, 3 M. & Cr. 359 . . . . .	65
Prees <i>v.</i> Coke, 6 Ch. 645 . . . . .	186, 187
Prendergast <i>v.</i> Lushington, 5 Ha. 171 . . . . .	88
— <i>v.</i> Prendergast, 3 H. L. C. 218 . . . . .	95
Prevost <i>v.</i> Clarke, 2 Madd. 458 . . . . .	52
Price <i>v.</i> Blakemore, 6 Bea. 507 . . . . .	145, 146, 304
— <i>v.</i> Jenkins, 5 Ch. D. 619; 46 L. J. Ch. 805; 37 L. T. N. S. 51 . . . . .	36
— <i>v.</i> Price, 14 Bea. 598 . . . . .	30, 32
— <i>Re</i> , 6 Eq. 460; 16 L. T. N. S. 760 . . . . .	40
— <i>v.</i> Seys, Barn. 117 . . . . .	169
Prichard <i>v.</i> Ames, T. & R. 222 . . . . .	247, 256
— <i>v.</i> Langher, 2 Vern. 197 . . . . .	233
— <i>v.</i> Wilson, 10 Jur. N. S. 330 . . . . .	280
Priddy <i>v.</i> Rose, 3 Mer. 86 . . . . .	335
Pride <i>v.</i> Bubb, 7 Ch. 64; 41 L. J. Ch. 105; 25 L. T. N. S. 890; 20 W. R. 220 . . . . .	258
— <i>v.</i> Fookes, 2 Bea. 432 . . . . .	131, 324, 337
Priestman <i>v.</i> Tindall, 24 Bea. 244 . . . . .	333
Prime <i>v.</i> Savell, W. N. 1867, 227 . . . . .	336
Prince <i>v.</i> Hine, 27 Bea. 345; 26 Bea. 634 . . . . .	16, 173, 176
Probert, <i>Re</i> , 1 W. R. 237 . . . . .	210
Procter <i>v.</i> Robinson, 35 Bea. 329; 15 W. R. 138; 15 L. T. N. S. 431 . . . . .	84
Proud <i>v.</i> Proud, 32 Bea. 234; 32 L. J. Ch. 125; 11 W. R. 101; 7 L. T. N. S. 553 . . . . .	311
Proudfoot <i>v.</i> Hume, 4 Bea. 476 . . . . .	276
Proudley <i>v.</i> Fielder, 2 M. & K. 57 . . . . .	251
Provost, &c., of Edinburgh <i>v.</i> Aubery, Amb. 236 . . . . .	246
Prowse <i>v.</i> Spurgin, 5 Eq. 99; 37 L. J. Ch. 251; 17 L. T. N. S. 590; 16 W. R. 413 . . . . .	231
Pryor, <i>Re</i> , W. N. 1876, 141 . . . . .	15
Pryse, <i>Re</i> , 10 Eq. 531; 18 W. R. 1064 . . . . .	118

	PAGE
Pugh, Re, 17 Bea. 336 . . . . .	262
— v. Vaughan, 12 Bea. 517 . . . . .	222
Pulling v. Reddy, 1 Wils. 21 . . . . .	168
Pulvertoft v. Pulvertoft, 18 Ves. 84 . . . . .	36
Purcell v. Blennerhassett, 3 J. & L. 24 . . . . .	316
Purefoy v. Purefoy, 1 Vern. 28 . . . . .	39
Pushman v. Filliter, 3 Ves. 7 . . . . .	52, 54
Pybus v. Smith, 1 Ves. Jun. 193 . . . . .	258, 327
Pye, Ex parte, Dubost, 18 Ves. 140, 149; 2 W. & T. L. C. 356 30, 32, 33, 34, 170	
Pym v. Lockyer, 5 M. & Cr. 29 . . . . .	65
Pyrax v. Woodcock, 24 L. T. N. S. 407 . . . . .	322
Pyrke v. Waddingham, 10 Ha. 1 . . . . .	120
QUARRELL v. Beckford, 14 Ves. 177 . . . . .	276
Quinton v. Frith, 1 R. 2 Eq. 396 . . . . .	241, 310, 311
R. v. White, 4 Car. & P. 46 . . . . .	282
Rabbidge, Ex parte, 8 Ch. D. 367 . . . . .	73
Raby v. Ridehalgh, 7 D. M. & G. 104; 3 W. R. 344 . . . . .	131, 335
Rackham v. Siddall, 1 McN. & G. 607 . . . . .	5, 14, 241
Raikes v. Raikes, 32 Bea. 403 . . . . .	205
Rainsdon, Re, 4 Drew. 446 . . . . .	268
Rakestraw v. Brewer, 2 P. W. 511 . . . . .	74, 75
Randall v. Errington, 10 Ves. 423 . . . . .	183, 191, 193, 194, 195, 318
— v. Russell, 3 Mer. 196 . . . . .	74
Ranking, Re, W. N. 1868, 243 . . . . .	234
Ransom v. Boyd, W. N. 1877, 236 . . . . .	277
Ransome v. Burgess, 3 Eq. 780; 36 L. J. Ch. 84 . . . . .	173
Raphael v. Boehm, 11 Ves. 111; 13 Ves. 407 . . . . .	287
— Re, 9 Eq. 233; 39 L. J. Ch. 200; 18 W. R. 247 . . . . .	40
Rashleigh v. Master, 3 B. C. C. 99 . . . . .	140
Ravenhill v. Dansey, 2 P. W. 179 . . . . .	162, 167
Ravenshaw v. Hollier, 7 Sim. 3 . . . . .	41
Rawbone, Re, 3 K. & G. 476 . . . . .	289
Rawe v. Chichester, Amb. 715 . . . . .	73, 78
Raworth v. Parker, 2 K. & J. 163; 4 W. R. 273; 25 L. J. Ch. 117; 27 L. T. N. S. 62 . . . . .	38
Ray v. Adams, 3 M. & K. 237 . . . . .	53
— Ex parte, 1 Mad. 199 . . . . .	255, 256
Rayne v. Baker, 1 Giff. 241 . . . . .	299
Read v. Shaw, cited 3 Y. & C. 375 . . . . .	119
— v. Snell, 2 Atk. 642 . . . . .	49
Reech v. Kennegal, 1 Ves. Sen. 123 . . . . .	80, 81



	PAGE
Reeve v. Parkins, 2 J. & W. 390 . . . . .	280
— v. Reeve, 1 Vern. 219 . . . . .	166
Reeves v. Baker, 3 Bea. 364 . . . . .	217
— v. Creswick, 3 Y. & C. 715 . . . . .	150
Rede v. Oakes, 4 D. J. & Sm. 505 ; 34 L. J. Ch. 145 ; 11 L. T. N. S. 549 ; 10 Jur. N. S. 1246 ; 13 W. R. 203 . . . . .	117, 118, 120, 280
Redhead, Re, W. N., 1878, 194 . . . . .	134
Redington v. Redington, 3 Ridg. P. C. 106 . . . . .	62, 63, 65, 67
Reg. v. Day, 3 E. & B. 859 . . . . .	222
Rehden v. Wesley, 29 Bea. 213 . . . . .	99, 238, 331
Reid v. Shergold, 10 Ves. 370 . . . . .	117, 119
Reilly v. Reilly, 34 Bea. 406 . . . . .	121
Reiner v. Salisbury, 2 Ch. D. 378 ; 24 W. R. 843 . . . . .	245
Remington, Re, 3 D. & C. 24 . . . . .	209
Remnant v. Hood, 2 D. F. & J. 396 ; 30 L. J. Ch. 71 ; 7 W. R. 606 ; 6 Jur. N. S. 1173 ; 3 L. T. N. S. 485 . . . . .	160, 163, 284
Rendell v. Carpenter, 2 Y. & J. 484 . . . . .	39
Rendlesham v. Meux, 14 Sim. 249 . . . . .	112
Renshaw, Re, 4 Ch. 783 ; 17 W. R. 1035 . . . . .	209, 210
Reresby v. Newland, 2 P. W. 93 . . . . .	163
Reynell v. Reynell, 10 Bea. 21 . . . . .	3
Reynish v. Martin, 3 Atk. 330 . . . . .	105, 162
Reynolds, Ex parte, 5 Ves. 707 . . . . .	193, 215
Rich v. Cockell, 9 Ves. 375 . . . . .	247, 248, 264
Richards v. Delbridge, 18 Eq. 11 ; 43 L. J. Ch. 459 . . . . .	27, 28, 29
— v. Perkins, 3 Y. & C. 299 . . . . .	273
— v. Richards, Johns. 754 . . . . .	168
Richardson v. Bank of England, 4 M. & Cr. 165 . . . . .	275
— v. Chapman, 7 B. P. C. 400 . . . . .	103
— Ex parte, Buck. 209 ; 3 Mad. 138 . . . . .	90
— v. Richardson, 3 Eq. 686 ; 36 L. J. Ch. 653 ; 15 W. R. 690 . . . . .	27
Rickards v. Gledstanes, 3 Giff. 298 . . . . .	290
Rider v. Kidder, 10 Ves. 360 . . . . .	64, 68
Ridout v. Plymouth, 1 Dick. 68 . . . . .	274
Rigden v. Vallier, 2 Ves. Sen. 258 . . . . .	69
Ridgway v. Newstead, 3 D. F. & J. 474 ; 30 L. J. Ch. 889 ; 7 Jur. N. S. 451 ; 9 W. R. 401 ; 4 L. T. N. S. 6, 492 . . . . .	330
Rippen v. Priest, 13 C. B. N. S. 308 . . . . .	22
Rippon v. Norton, 2 Bea. 63 . . . . .	178
Roberdeau v. Rous, 1 Atk. 543 . . . . .	244
Roberts v. Dixall, 2 Eq. Ca. Ab. 668, pl. 19 . . . . .	169
— v. Dixwell, 1 Atk. 607 . . . . .	48, 50, 271
— v. Gordon, 6 Ch. D. 531 ; 4 L. J. Ch. 749 ; 37 L. T. N. S. 627 . . . . .	11, 12, 308

	PAGE
Roberts, Re, 7 Jur. N. S. 818 . . . . .	213
— v. Tunstall, 4 Ha. 257 . . . . .	194, 195, 320
Robertson v. Armstrong, 28 Bea. 123 . . . . .	18, 19, 119
— v. Norris, 1 Giff. 421; 4 Jur. N. S. 155, 443; 30 L. T. 253 . . . . .	186, 310
Robison v. Killey, 30 Bea. 520 . . . . .	176
Robinson v. Cleator, 15 Ves. 526 . . . . .	167, 181
— v. Cuming, 1 Atk. 473 . . . . .	3, 6
— v. Lowater, 5 D. M. & G. 272; 2 W. R. 181, 394; 18 Jur. 321, 363; 23 L. T. 17; 2 Eq. Rep. 337 . . . . .	126, 128
— v. Pett, 3 P. W. 249 . . . . .	196
— v. Preston, 4 K. & J. 505 . . . . .	69, 70, 71
— v. Ridley, 6 Mad. 2 . . . . .	192
— v. Robinson, 1 D. M. & G. 249 . . . . .	87, 88, 90, 131, 143, 283
— v. Wheelwright, 6 D. M. & G. 535; 4 W. R. 427; 25 L. J. Ch. 385; 27 L. T. N. S. 73; 20 Jur. N. S. 554 . . . . .	267
Robson v. Attorney-General, 10 Cl. & F. 471 . . . . .	244
Roche v. O'Brien, 1 B. & B. 330 . . . . .	194
— Re, 1 C. & L. 308; 2 Dr. & War. 287 . . . . .	209
Rochford v. Hackman, 9 Ha. 480 . . . . .	84
Rochfort v. Fitzmaurice, 2 Dr. & W. 1 . . . . .	8, 9, 44, 47
Rocke v. Rocke, 9 Bea. 66 . . . . .	84
Roe v. Reade, 8 T. R. 118 . . . . .	21
Rogers v. Earle, 1 Dick. 294 . . . . .	46
— Ex parte, 8 D. M. & G. 271; 20 Jur. N. S. 480 . . . . .	289, 290
— v. Ingham, 3 Ch. D. 351; 35 L. T. N. S. 677; 25 W. R. 338 . . . . .	231, 232
— v. Rogers, 3 P. W. 193 . . . . .	59
— v. Skillicorne, Amb. 188 . . . . .	126, 127
— v. Soutten, 2 Keen, 598 . . . . .	65
Rolfe v. Gregory, 4 D. J. & Sm. 576; 34 L. J. Ch. 274; 8 Jur. N. S. 606; 10 W. R. 711 . . . . .	293, 296, 322
Romford Market case, 1 W. & T. L. C. 44 . . . . .	73
Ronayne, Re, 13 Ir. Ch. R. 444 . . . . .	191
Rook v. Kensington, 2 K. & J. 753 . . . . .	234
Roper-Curzon v. Roper-Curzon, 11 Eq. 452; 24 L. T. N. S. 406 . . . . .	178, 179
Roper v. Radcliffe, 9 Mod. 171 . . . . .	58
— v. Roper, 3 Ch. D. 714; 35 L. T. N. S. 155 . . . . .	269
Rose v. Watson, 10 H. L. C. 678 . . . . .	72
Rosenthal, Re, 6 W. R. 139 . . . . .	251
Rosher v. Williams, 20 Eq. 210; 44 L. J. Ch. 419; 32 L. T. N. S. 387; 23 W. R. 561 . . . . .	36
Ross v. Ross, 12 Bea. 89 . . . . .	275
Rossiter v. Trafalgar Assurance Association, 27 Bea. 377 . . . . .	113

	PAGE
Rosslyn, Re, 16 Sim. 391 . . . . .	153
Rothwell v. Rothwell, 2 S. & S. 217 . . . . .	275
Rowbotham v. Dunnett, 8 Ch. D. 437 . . . . .	81
Rowe v. Rowe, 29 Bea. 276 . . . . .	94
Rowland v. Cuthbertson, 8 Eq. 466; 20 L. T. N. S. 938; 17 W. R. 907 . . . . .	270
— v. Morgan, 13 Jur. 23 . . . . .	230
Rowley v. Adams, 2 H. L. C. 725 . . . . .	88
— v. Unwin, 2 K. & J. 138 . . . . .	249
Rowth v. Howell, 3 Ves. 565a. . . . .	99
Roy v. Gibbon, 4 Ha. 65 . . . . .	275
Rundle v. Rundle, 2 Vern. 264 . . . . .	63
Rushbrook v. Lawrence, 8 Eq. 25; 5 Ch. 3; 39 L. J. Ch. 93; 21 L. T. N. S. 477; 18 W. R. 101 . . . . .	186
Rushout v. Rushout, 2 B. P. C. 89 . . . . .	169
Russell v. Jackson, 10 Ha. 204 . . . . .	79, 81, 82
— v. Plaice, 18 Bea. 21; 2 W. R. 243; 23 L. J. Ch. 441; 18 Jur. 254; 22 L. T. 326 . . . . .	123
— Re, 15 Eq. 26; 27 L. T. N. S. 706; 21 W. R. 97 . . . . .	289
— v. St. Aubyn, 2 Ch. D. 398; 46 L. J. Ch. 641; 35 L. T. N. S. 395 . . . . .	170
Ryall v. Rowles, 2 W. & T. L. C. 770 . . . . .	288
— v. Ryall, 1 Atk. 59; cited Amb. 412 . . . . .	67, 68
Rycroft v. Christy, 3 Bea. 238 . . . . .	29, 241, 248
Ryder v. Bickerton, 3 Swans. 80 n. . . . .	137, 334
SABIN v. Heape, 27 Bea. 553; 29 L. J. Ch. 79; 1 L. T. N. S. 51; 5 Jur. N. S. 1146; 8 W. R. 120 . . . . .	
Sackville-West v. Holmesdale, L. R. 4 H. L. 543; 39 L. J. Ch. 505 . . . . .	44, 45, 47, 48, 49, 50
Sadler v. Hobbs, 2 B. C. C. 114 . . . . .	18
Sainsbury v. Jones, 5 M. & Cr. 1 . . . . .	113
St. John v. Boughton, 9 Sim. 219 . . . . .	316
Sale v. Moore, 1 Sim. 534 . . . . .	53, 54, 55
Salmon v. Cutts, 4 D. G. & Sm. 125; 16 Jur. 623 . . . . .	194
Salsbury v. Bagott, 2 Swans. 608 . . . . .	296
Salter v. Cavanagh, 1 Dr. & Wal. 684 . . . . .	59, 307, 313
Saltmarsh v. Barrett, 3 D. F. & J. 279; 31 Bea. 349; 30 L. J. Ch. 853; 9 W. R. 564 . . . . .	59, 283
Salusbury v. Denton, 3 K. & J. 529 . . . . .	103
Salway v. Salway, 2 R. & My. 215; 3 Cl. & F. 44 . . . . .	99
Sampayo v. Gould, 12 Sim. 426 . . . . .	50
Sander v. Heathfield, 19 Eq. 21; 44 L. J. Ch. 117; 31 L. T. N. S. 400; 23 W. R. 331 . . . . .	329

	PAGE
Sanders v. Richards, 2 Coll. 568 . . . . .	123
Sanderson, Re, 3 K. & J. 497 . . . . .	180, 181
— v. Walker, 3 Ves. 601 . . . . .	182, 183, 193
Sands v. Nugee, 8 Sim. 130 . . . . .	212
Sandys v. Sandys, 1 P. W. 707 . . . . .	162
Sanger v. Sanger, 11 Eq. 470; 40 L. J. Ch. 372; 24 L. T. N. S. 649; 19 W. R. 792 . . . . .	250
Saunders v. Dehew, 2 Vern. 271 . . . . .	294, 297
— v. Eppe, 9 W. R. 69; 3 L. T. N. S. 291 . . . . .	8
— Ex parte, 2 G. & J. 132 . . . . .	209
— v. Nevil, 2 Vern. 428 . . . . .	224
— v. Vautier, Cr. & Ph. 240 . . . . .	81
Savage v. Carroll, 1 B. & B. 265 . . . . .	162
Savery v. King, 5 H. L. C. 655 . . . . .	189
Sawyer v. Birchmore, 2 M. & Cr. 611 . . . . .	231
— v. Goodwin, 16 L. T. N. S. 514 . . . . .	325
Sayre v. Hughes, 5 Eq. 376 . . . . .	64
Scales v. Baker, 28 Bea. 91; 8 W. R. 287; 2 L. T. N. S. 659 249, 252 . . . . .	
Scarisbrick v. Skelmersdale, 17 Sim. 187 . . . . .	154
Scarborough v. Borman, 1 Bea. 34; 4 M. & Cr. 377 . . . . .	266
Scarsdale v. Curzon, 1 J. & H. 51; 29 L. J. Ch. 313; 6 Jur. N. S. 262, 436; 1 L. T. N. S. 471 . . . . .	51
Scattergood v. Harrison, Mos. 128 . . . . .	198
Schroder v. Schroder, Kay, 591 . . . . .	323
Sclater v. Cottam, 3 Jur. N. S. 630 . . . . .	197
Scott v. Becher, 4 Price, 346 . . . . .	272
— v. Hastings, 4 K. & J. 633 . . . . .	291
— v. Jones, 4 Cl. & F. 382 . . . . .	39
— v. Key, 35 Bea. 291 . . . . .	55, 175
Scroope v. Scroope, 1 Ch. Ca. 27 . . . . .	63
Sculthorp v. Burgess, 1 Ves. Jun. 92 . . . . .	61
— v. Tipper, 13 Eq. 232; 41 L. J. Ch. 266; 26 L. T. N. S. 119 . . . . .	89, 114, 115, 139
Scurfield v. Howes, 3 B. C. C. 91 . . . . .	18, 330
Seale v. Seale, 1 P. W. 290 . . . . .	47
Sealy v. Stawell, I. R. 2 Eq. 326 . . . . .	47, 305
Searle v. Law, 15 Sim. 95 . . . . .	29
Seagram v. Knight, 2 Ch. 628; 36 L. J. Ch. 918; 17 L. T. N. S. 47; 15 W. R. 1152 . . . . .	101, 313
Selby v. Bowie, 4 Giff. 300; 9 Jur. N. S. 425; 11 W. R. 606; 2 N. R. 2; 8 L. T. N. S. 372 . . . . .	90, 241
— v. Cooling, 23 Bea. 418 . . . . .	123
Selsey v. Rhoades, 2 S. & S. 41; 1 Bli. N. R. 1 . . . . .	186, 194

## TABLE OF CASES.

lxxxv

	PAGE
Sewell, Re, 11 Eq. 80 ; 40 L. J. Ch. 135 ; 23 L. T. N. S. 835 ; 19 W. R. 220 . . . . .	93
Shaftesbury v. Marlborough, 2 M. & R. 118 . . . . .	151
Shakeshaft, Ex parte, 3 B. C. C. 197 . . . . .	219, 220
Shapland v. Smith, 1 B. C. C. 74 . . . . .	3
Sharp v. Sharp, 2 B. & Ald. 405 . . . . .	208, 209
— v. St. Sauveur, 7 Ch. 351 ; 41 L. J. Ch. 576 . . . . .	244
Sharpe v. Foy, 4 Ch. 35 . . . . .	266
— v. Sharpe, 12 Jur. 598 . . . . .	22
Sharples v. Adams, 32 Bea. 213 ; 11 W. R. 450 ; 1 N. R. 460 . . . . .	297
Shattock v. Shattock, 2 Eq. 182 ; 35 L. J. Ch. 509 ; 14 L. T. N. S. 452 ; 14 W. R. 600 ; 12 Jur. N. S. 405 . . . . .	262
Shaw v. Borrer, 1 Keen, 559 . . . . .	126, 128
— v. Bunny, 2 D. G. J. & Sm. 468 ; 34 L. J. Ch. 257 . . . . .	131, 186
— Ex parte, 8 Sim. 159 . . . . .	22
— v. Ford, 7 Ch. D. 674 . . . . .	84
— v. Foster, L. R. 5 H. L. 321 ; 42 L. J. Ch. 49 ; 20 W. R. 907 . . . . .	72, 296
— v. Lawless, 5 Cl. & F. 129 . . . . .	55
Shaw, Re, 12 Eq. 124 ; 25 L. T. N. S. 22 ; 19 W. R. 1025 . . . . .	91, 102, 108, 109
— v. Rhodes, 1 M. & Cr. 135 . . . . .	155
— v. Weigh, 1 Eq. Ca. Ab. 185 . . . . .	5
Sheaf v. Cave, 24 Bea. 259 . . . . .	270
Sheffield Railway Co., Re, 1 Sm. & G. App. iv . . . . .	144
Sheldon v. Cox, 2 Ed. 228 . . . . .	298
— v. Dormer, 2 Vern. 310 . . . . .	165
— v. Weldman, 1 Ch. Ca. 26 . . . . .	309
Shelford v. Acland, 23 Bea. 13 ; 5 W. R. 170 ; 3 Jur. N. S. 203 . . . . .	259
Shelley's Case, 1 Co. Rep. 93 . . . . .	43
Shelley v. Shelley, 6 Eq. 540 ; 37 L. J. Ch. 357 . . . . .	51
Shelmerdine, Re, 33 L. J. Ch. 474 . . . . .	212
Shelton v. Watson, 16 Sim. 543 . . . . .	48
Shepherd v. Nottidge, 2 J. & H. 766 ; 1 N. R. 15 ; 7 L. T. N. S. 399 . . . . .	53
Sheridan v. Joyce, 7 I. Eq. R. 115 . . . . .	233
Sheriff v. Axe, 4 Russ. 33 . . . . .	198
Sherman v. Collins, 3 Atk. 318 . . . . .	160, 166
Sherrard v. Harborough, Amb. 165 . . . . .	58
Sherratt v. Bentley, 1 R. & M. 655 . . . . .	11
Sherwood, Re, 3 Bea. 338 . . . . .	201
Shewell v. Dwaris, Johns. 172 . . . . .	256
Shipbrook v. Hinchinbrook, 11 Ves. 252 ; 16 Ves. 477 . . . . .	18, 19, 100, 239

	PAGE
Shirt <i>v.</i> Westby, 16 Ves. 393 . . . . .	116
Shore <i>v.</i> Shore, 4 Dr. 510 . . . . .	274
Shovelton <i>v.</i> Shovelton, 32 Bea. 143; 1 N. R. 226 . . . . .	53, 57
Shrewsbury Hospital, <i>Ex parte</i> , 9 Ha. App. 45 . . . . .	16
— <i>v.</i> N. Staffordshire Railway Co., 1 Eq. 593; 35 L. J. Ch. 156; 13 L. T. N. S. 648; 12 Jur. N. S. 405; 14 W. R. 220 . . . . .	73
Sidmouth <i>v.</i> Sidmouth, 2 Bea. 447 . . . . .	62, 65, 67
Sidney <i>v.</i> Ranger, 12 Sim. 118 . . . . .	191
Siggers <i>v.</i> Evans, 5 E. & B. 367 . . . . .	38, 41
Sillibourne <i>v.</i> Newport, 1 K. & J. 602; 3 W. R. 653 . . . . .	175
Silvester <i>v.</i> Jarman, 10 Price, 78 . . . . .	22
— <i>v.</i> Wilson, 2 T. R. 444 . . . . .	3
Simes <i>v.</i> Eyre, 6 Ha. 137 . . . . .	88
Simons <i>v.</i> Horwood, 1 Keen, 7 . . . . .	252
Simmons <i>v.</i> Simmons, 6 Ha. 352 . . . . .	248
Simpson <i>v.</i> Bathurst, 5 Ch. 193; 23 L. T. N. S. 29; 18 W. R. 772 . . . . .	119
— <i>v.</i> Brown, 13 W. R. 312 . . . . .	181
— <i>v.</i> Frew, 5 I. Ch. R. 517 . . . . .	159
— <i>v.</i> Lester, 4 Jur. N. S. 1267; 33 L. T. 6 . . . . .	92
Simson, <i>Re</i> , 1 J. & H. 89 . . . . .	109, 143
Sisson <i>v.</i> Shaw, 9 Ves. 288 . . . . .	173
Sitwell <i>v.</i> Bernard, 6 Ves. 520 . . . . .	97, 147
Skett <i>v.</i> Whitmore, 2 Free. 280 . . . . .	68
Skidmore <i>v.</i> Bradford, 8 Eq. 134; 17 W. R. 1056 . . . . .	62
Skingley, <i>Re</i> , 15 Jur. 958 . . . . .	107
Skinner, <i>Ex parte</i> , 2 Mer. 457 . . . . .	185
— <i>v.</i> Sweet, 3 Mad. 244 . . . . .	336
Skirving <i>v.</i> Williams, 24 Bea. 275; 30 L. T. N. S. 49; 3 Jur. N. S. 927 . . . . .	92, 94
Slaney <i>v.</i> Watney, 2 Eq. 418; 35 L. J. Ch. 783 . . . . .	200
Slanning <i>v.</i> Style, 3 P. W. 334 . . . . .	249
Sleeman <i>v.</i> Wilson, 13 Eq. 36; 25 L. T. N. S. 408; 20 W. R. 109 . . . . .	198, 334
Sleight <i>v.</i> Lawson, 3 K. & J. 292; 5 W. R. 589 . . . . .	328
Slingsby <i>v.</i> Lawson, 10 Mod. 398 . . . . .	159
Sloane <i>v.</i> Cadogan, Sugd. V. & P. App. 26, 9th ed. . . . .	28, 34
Small <i>v.</i> Marwood, 9 B. & C. 308 . . . . .	11, 13
— <i>v.</i> Wing, 5 B. P. C. 66 . . . . .	164, 166
Smallman, <i>Re</i> , 1 R. 8 Eq. 249 . . . . .	259
Smedly <i>v.</i> Varley, 23 Bea. 358 . . . . .	185, 193
Smirthwaite, <i>Re</i> , 11 Eq. 251; 40 L. J. Ch. 176; 23 L. T. N. S. 726; 19 W. R. 381 . . . . .	204
Smith <i>v.</i> Adams, 5 D. M. & G. 712 . . . . .	270
— <i>v.</i> Baker, 1 Atk. 385 . . . . .	67

	PAGE
Smith <i>v.</i> Bolden, 33 Bea. 262 . . . . .	232
— <i>v.</i> Camelford, 2 Ves. Jun. 698 . . . . .	157
— <i>v.</i> Chichester, 1 C. & L. 486 . . . . .	76
— <i>v.</i> Evans, Amb. 633 . . . . .	164
— Ex parte, 1 Deac. 385 . . . . .	15, 16
— — 1 D. & C. 267 . . . . .	195
— <i>v.</i> Frederick, 1 Russ. 174 . . . . .	168
— <i>v.</i> Garland, 2 Mer. 122 . . . . .	36
— <i>v.</i> Guyon, 1 B. C. C. 186 . . . . .	127
— <i>v.</i> Iliffe, 20 Eq. 666 ; 44 L. J. Ch. 755 ; 33 L. T. N. S. 200 ; 23 W. R. 851. . . . .	46
— <i>v.</i> Keating, 6 C. B. 136 . . . . .	41
— <i>v.</i> Lyne, 2 Y. & C. C. C. 345 . . . . .	35
— <i>v.</i> Matthews, 3 D. F. & J. 139 ; 30 L. J. Ch. 445 ; 4 L. T. N. S. 236 ; 7 Jur. N. S. 378 ; 9 W. R. 644 . . . . .	25
— <i>v.</i> Partridge, Amb. 266 . . . . .	160
— Re, 4 Ch. D. 70 ; 35 L. T. N. S. 890 . . . . .	21
— Re, 20 W. R. 695 . . . . .	109, 212
— <i>v.</i> Smith, 1 Dr. & Sm. 384 . . . . .	121
— <i>v.</i> —, 11 C. B. N. S. 121 ; 5 L. T. N. S. 447 ; 10 W. R. 18 . . . . .	7
— <i>v.</i> —, 10 Ha. App. xxv. lxxi. . . . .	273
— <i>v.</i> Spencer, 2 Jur. N. S. 778 . . . . .	270
— <i>v.</i> Warde, 15 Sim. 56 . . . . .	34, 64, 66
— <i>v.</i> Wilkinson, cited 3 Ves. 705 . . . . .	68
Sneesby <i>v.</i> Thorne, 7 D. M. & G. 399 ; 3 W. R. 438, 605 ; 25 L. T. N. S. 125, 250 . . . . .	113, 114
Snowden <i>v.</i> Dales, 6 Sim. 524 . . . . .	84, 177
Soar <i>v.</i> Foster, 4 K. & J. 152 ; 6 W. R. 265 ; 4 Jur. N. S. 406 . . . . .	64
Sobey <i>v.</i> Sobey, 15 Eq. 200 ; 42 L. J. Ch. 271 ; 27 L. T. N. S. 808 ; 21 W. R. 309 . . . . .	280
Solley <i>v.</i> Wood, 29 Bea. 482 ; 30 L. J. Ch. 813 ; 7 Jur. N. S. 1225 . . . . .	151
Soulby, Re, 21 W. R. 256 . . . . .	204
South Eastern Ry. Co., Ex parte, 9 Jur. 650 . . . . .	132
Southampton <i>v.</i> Hertford, 2 V. & B. 54 . . . . .	152, 154
Sowarsby <i>v.</i> Lacy, 4 Mad. 142 . . . . .	125
Sowden <i>v.</i> Sowden, 1 B. C. C. 581 . . . . .	305
Sowerby, Re, 2 K. & J. 630 . . . . .	39
Spalding <i>v.</i> Shalmer, 1 Vern. 303 . . . . .	126
Speer, Re, 3 Ch. D. 262 ; 24 W. R. 880 . . . . .	105
Spicer <i>v.</i> Dawson, 5 W. R. 431 ; 29 L. T. N. S. 136 . . . . .	247, 253
Spickernell <i>v.</i> Hotham, Kay, 669 ; 2 W. R. 638 . . . . .	88, 309, 313, 315
Spirett <i>v.</i> Willows, 3 D. J. & Sm. 293 ; 34 L. J. Ch. 365 ; 14 L. T. N. S. 720 ; 12 Jur. N. S. 538 ; 14 W. R. 941 . . . . .	255
Spencer <i>v.</i> Spencer, 8 Sim. 87 . . . . .	158

	PAGE
Spencer v. Topham, 22 Bea. 577 ; 28 L. T. N. S. 53 ; 2 Jur. N. S.	
865	189
Spottiswoode v. Stockdale, G. Coop. 102	37
Spring v. Pride, 4 D. J. & Sm. 395	183, 184
Springett v. Dashwood, 2 Giff. 521 ; 7 Jur. N. S. 93 ; 3 L. T. N.	
S. 542	228
— v. Jennings, 10 Eq. 495 ; 6 Ch. 333 ; 40 L. J. Ch. 348 ;	
24 L. T. N. S. 643 ; 19 W. R. 575	80, 82
Spurway v. Glyn, 9 Ves. 483	116
Stace v. Gage, 8 Ch. D. 451	119
Stacey v. Elph, 1 M. & K. 195 ; 2 L. J. Ch. 50	10, 11, 14, 183
Stackpoole v. Stackpoole, 4 Dow. 209	285
Stamford v. Hobart, 3 B. P. C. 31	43
— Bank v. Ball, 4 D. F. & J. 310 ; 10 W. R. 196 ; 31 L. J.	
Ch. 143 ; 8 Jur. N. S. 420 ; 4 L. T. N. S. 594	261, 263
Stanes v. Parker, 9 Bea. 385	201
Stanford v. Roberts, 6 Ch. 310 ; 19 W. R. 552	226
Stanhope v. Thacker, Pr. Ch. 436	164
Staniforth v. Staniforth, 2 Vern. 460	162, 167
Stanley v. Coulthurst, 10 Eq. 259 ; 29 L. J. Ch. 650 ; 23 L. T. N.	
S. 761 ; 18 W. R. 969	49
— v. Stanley, 7 Ch. D. 589 ; 47 L. J. Ch. 256 ; 37 L. T. N.	
S. 777 ; 26 W. R. 310	266
— v. —, 1 Atk. 548	162, 163
Stanton v. Hall, 2 R. & My. 175	253, 256
Stapilton v. Stapilton, 2 W. & T. L. C. 836	33
Stapleton v. Stapleton, 14 Sim. 186	28
Starkey v. Brooks, 1 P. W. 590	59
Stead v. Mellor, 5 Ch. D. 225 ; 36 L. T. N. S. 498 ; 25 W. R. 508	52,
54	
— v. Nelson, 2 Bea. 245	263
Steedman v. Poole, 6 Ha. 193 ; 11 Jur. 449	255, 267
Steele v. Cobham, 1 Ch. 325 ; 14 L. T. N. S. 242 ; 14 W. R. 493	272
— v. Murphy, 3 Moore, P. C. 445	41
— v. Waller, 28 Bea. 466	30
Stepney v. Biddulph, 13 W. R. 576	192
Stevens v. Robertson, W. N. 1868, 123	138
Stevens' Will, 6 Eq. 597	21
Stevenson v. Liverpool, Mayor of, L. R. 10 Q. B. 81 ; 44 L. J. Q.	
B. 34 ; 31 L. T. N. S. 673 ; 23 W. R. 246	2
Steward v. Blakeway, 4 Ch. 603	71, 252
Stewart, Ex parte, 11 Jur. N. S. 25	290
— v. Hoare, 2 B. C. C. 663	212
— Re, 8 W. R. 297	210



	PAGE
Stewart v. Sanderson, 10 Eq. 26; 39 L. J. Ch. 337; 22 L. T. N. S.	
10; 18 W. R. 278 . . . . .	132, 139
Stickland v. Aldridge, 9 Ves. 516 . . . . .	80, 81
Stickney v. Sewell, 1 M. & Cr. 8 . . . . .	138, 139, 140, 141
Stileman v. Ashdown, 2 Atk. 477 . . . . .	63
Stock v. McAvoy, 15 Eq. 55; 42 L. J. Ch. 230; 27 L. T. N. S.	
441; 21 W. R. 521 . . . . .	62, 66
Stocken v. Dawson, 9 Bea. 239 . . . . .	287
— v. Stocken, 4 Sim. 152; 4 M. & Cr. 95 . . . . .	173
Stocks v. Dobson, 4 D. M. & G. 11 . . . . .	288
Stokes, Re, 13 Eq. 333; 41 L. J. Ch. 290; 26 L. T. N. S. 181; 20	
W. R. 396 . . . . .	207, 213
Stone v. Evans, 2 Atk. 86 . . . . .	160
— Ex parte, 8 Ch. 914 . . . . .	220
— v. Stone, 5 Ch. 74; 39 L. J. Ch. 196; 22 L. T. N. S. 182; 3	
Jur. N. S. 708 . . . . .	241, 309
— v. Theed, 2 B. C. C. 243; 5 Ha. 451 n. . . . .	75, 77, 148, 150
Stone v. Thomas, 5 Ch. 219; 39 L. J. Ch. 168; 22 L. T. N. S. 359;	
18 W. R. 385 . . . . .	188
Stones v. Rowten, 17 Bea. 308 . . . . .	208
Stonor v. Curwen, 5 Sim. 264 . . . . .	48
Story v. Gape, 2 Jur. N. S. 706 . . . . .	313, 314
— v. Windsor, 2 Atk. 630 . . . . .	299
Stratford v. Twyman, Jac. 421 . . . . .	188
Stratton v. Murphy, 1 R. 1 Eq. 345 . . . . .	74
Streatfield v. Streatfield, Talb. 176 . . . . .	44
Stretch v. Watkins, 1 Mad. 253 . . . . .	173
Stretton v. Ashmall, 3 Dr. 9; 3 W. R. 4; 24 L. J. Ch. 277 . . . . .	141
Stroud v. Gwyer, 28 Bea. 130; 6 Jur. N. S. 719; 2 L. T. N. S.	
400 . . . . .	96, 287, 326
Stroughill v. Anstey, 1 D. M. & G. 635 . . . . .	122, 123, 126, 127, 129
Stuart v. Cockerell, 8 Eq. 607; 39 L. J. Ch. 127; 18 W. R. 1057 . . . . .	289
— v. Kirkwall, 3 Mad. 387 . . . . .	261
— v. Stuart, 3 Bea. 430 . . . . .	135
Stubbs v. Roth, 2 B. & B. 548 . . . . .	77
— v. Sargon, 2 Keen, 255; 3 M. & Cr. 507 . . . . .	56, 59
Sturgis v. Corp, 13 Ves. 190 . . . . .	258
— v. Morse, 3 D. & J. 1 . . . . .	297, 307, 323
Sturt, Ex parte, 13 Eq. 309; 41 L. J. Ch. 12; 20 W. R. 200 . . . . .	220
Styles v. Guy, 1 Macn. & G. 422; 19 L. J. Ch. 185 . . . . .	13, 87, 240
Sugden v. Crossland, 3 Sm. & G. 192; 4 W. R. 343; 26 L. T. N.	
S. 307; 20 Jur. N. S. 318 . . . . .	205
Sutherland v. Cooke, 1 Coll. 503 . . . . .	92, 97
Sutton v. Jones, 15 Ves. 584 . . . . .	202

	PAGE
Sutton <i>v.</i> Wilders, 12 Eq. 373; 41 L. J. Ch. 30; 25 L. T. N. S. 292;	
19 W. R. 1021 . . . . .	142, 235
Swale <i>v.</i> Swale, 22 Bea. 584 . . . . .	15, 273
Swallow <i>v.</i> Binns, 1 K. & J. 417 . . . . .	65, 160, 161
Sweetapple <i>v.</i> Bindon, 2 Vern. 536 . . . . .	47
Swift <i>v.</i> Wenman, 10 Eq. 15; 39 L. J. Ch. 336; 22 L. T. N. S. 194;	
18 W. R. 480 . . . . .	235
Swinfen <i>v.</i> Swinfen, 29 Bea. 211 . . . . .	98
Sykes <i>v.</i> Hastings, 11 Ves. 363 . . . . .	202
— <i>Re</i> , 2 Y. & H. 415 . . . . .	30, 262
— <i>v.</i> Sheard, 33 Bea. 114; 2 D. J. & Sm. 6; 33 L. J. Ch. 181;	
11 W. R. 1014; 2 N. R. 540 . . . . .	118
— <i>v.</i> Sykes, 13 Eq. 56; 41 L. J. Ch. 25; 25 L. T. N. S. 560; 20	
W. R. 90 . . . . .	152
Symes <i>v.</i> Hughes, 9 Eq. 475; 39 L. J. Ch. 314; 22 L. T. N. S. 462	85
Symonds <i>v.</i> Wilkes, 11 Jur. N. S. 659; 12 W. R. 541; 10 L. T. N.	
S. 153 . . . . .	45
Synge <i>v.</i> Hales, 2 B. & B. 499 . . . . .	50
Synnot <i>v.</i> Simpson, 5 H. L. C. 139 . . . . .	41
 TADDY, <i>Re</i> , 16 Eq. 532; 43 L. J. Ch. 191; 29 L. T. N. S. 243; 21	
W. R. 863 . . . . .	134
Taggart <i>v.</i> Taggart, 1 Sch. & L. 84 . . . . .	46
Tait <i>v.</i> Jenkins, 1 Y. & C. C. C. 492 . . . . .	273
— <i>v.</i> Lathbury, 1 Eq. 174; 35 Bea. 112; 11 Jur. N. S. 991; 14	
W. R. 216 . . . . .	126, 146
Taite <i>v.</i> Swinstead, 26 Bea. 525; 6 W. R. 373; 33 L. T. 312 . . .	116
Talbot <i>v.</i> Cody, 1 R. 10 Eq. 146 . . . . .	64
— <i>v.</i> Marshfield, 2 Dr. & Sm. 285; 4 Eq. 661; 3 Ch. 622; 37	
L. J. Ch. 51; 19 L. T. N. S. 223 . . . . .	138, 175, 179, 276
— <i>v.</i> Scott, 4 K. & J. 139 . . . . .	274
Tanner <i>v.</i> Elworthy, 4 Bea. 487 . . . . .	75
Tarsey, <i>Re</i> , 1 Eq. 561; 35 L. J. Ch. 452; 14 L. T. N. S. 15; 12	
Jur. N. S. 370; 14 W. R. 474 . . . . .	254
Tasker <i>v.</i> Small, 6 Sim. 625; 3 M. & Cr. 70 . . . . .	72, 164
Taster <i>v.</i> Marriott, Amb. 668 . . . . .	74, 75
Tate <i>v.</i> Leithead, Kay, 658; 2 W. R. 630; 23 L. T. 252 . . . .	28
— <i>v.</i> Williamson, 2 Ch. 55; 15 L. T. N. S. 549 . . . . .	184
Tatham <i>v.</i> Vernon, 29 Bea. 604; 9 W. R. 822; 4 L. T. N. S. 531	30
Taylor <i>v.</i> Baker, 5 Price, 306 . . . . .	299
— <i>v.</i> Clark, 1 Ha. 161 . . . . .	96
— <i>v.</i> George, 2 V. & B. 378 . . . . .	53
— <i>v.</i> Glanville, 3 Mad. 178 . . . . .	230
— <i>v.</i> Haygarth, 14 Sim. 16 . . . . .	243

	PAGE
Taylor v. Meads, 4 D. G. & Sm. 597 ; 34 L. J. Ch. 203 ; 11 Jur. N. S. 166 . . . . .	252, 257, 258, 259
—— v. Plumer, 3 M. & S. 562 . . . . .	300, 301
—— v. Salmon, 4 M. & Cr. 134 . . . . .	186
—— v. Sparrow, 4 Giff. 706 . . . . .	226
—— v. Stibbert, 2 Ves. Jun. 437 . . . . .	294
—— v. Tabrum, 6 Sim. 281 . . . . .	112, 114, 115, 330
—— v. Taylor, 20 Eq. 155 ; 44 L. J. Ch. 718 ; 23 W. R. 719 . . . . .	167, 180
—— v. Taylor, 1 Atk. 386 . . . . .	62
Teague, Re, 10 Eq. 564 ; 22 L. T. N. S. 742 ; 18 W. R. 752 . . . . .	267
Teasdale v. Braithwaite, 5 Ch. D. 630 ; 46 L. J. Ch. 725 ; 36 L. T. N. S. 601 ; 25 W. R. 546 . . . . .	45, 48
Tebbitt v. Tebbitt, 1 D. G. & Sm. 506 . . . . .	204
Tebbs v. Carpenter, 1 Mad. 290 . . . . .	114, 115, 283, 285
Tee v. Ferris, 2 K. & J. 367 ; 4 W. R. 352 ; 25 L. J. Ch. 437 . . . . .	80, 81
Teed v. Beere, 5 Jur. N. S. 381 . . . . .	309
Tempest, Re, 1 Ch. 485 ; 14 L. T. N. S. 685 ; 12 Jur. N. S. 539 ; 14 W. R. 850 . . . . .	211
Tench v. Cheese, 6 D. M. & G. 461 . . . . .	154
Tennant v. Trenchard, 4 Ch. 547 ; 38 L. J. Ch. 169 ; 20 L. T. N. S. 856 . . . . .	185
Terry v. Terry, Prec. Ch. 273 . . . . .	136
Tewart v. Lawson, 18 Eq. 495 ; 43 L. J. Ch. 673 ; 22 W. R. 822 . . . . .	154
Teynham v. Webb, 2 Ves. Sen. 210 . . . . .	159
Therry v. Henderson, 15 L. T. N. S. 452 . . . . .	181
Thirtle v. Vaughan, 24 L. T. 5 ; 2 W. R. 632 . . . . .	22
Thomas v. Price, 46 L. J. Ch. 761 . . . . .	266
—— v. Thomas, 2 K. & J. 79 . . . . .	311
—— v. Townsend, 16 Jur. 736 . . . . .	112
—— v. Walker, 18 Bea. 521 . . . . .	205
Thomason v. Mackworth, O. Bridgm. 507 . . . . .	4
Thompson v. Andrews, 1 M. & K. 116 . . . . .	90
—— v. Bennett, 6 Ch. D. 739 ; 37 L. T. N. S. 119 ; 25 W. R. 862 . . . . .	252
—— v. Clive, 11 Bea. 475 . . . . .	228
—— v. Finch, 22 Bea. 316 ; 25 L. J. Ch. 681 ; 27 L. T. N. S. 330 . . . . .	239, 240, 282, 334
—— v. Fisher, 10 Eq. 207 . . . . .	48
—— v. Grant, 4 Mad. 438 . . . . .	21
—— v. Griffin, Cr. & Ph. 317 . . . . .	173
—— v. Simpson, 1 Dr. & War. 459, 491 . . . . .	47, 320
Thomson v. Eastwood, L. R. 2 App. Ca. 215 . . . . .	230, 232, 236, 308, 323

	PAGE
Thomson v. Shakespear, 1 D. F. & J. 399; 29 L. J. Ch. 276; 2 L. T. N. S. 479; 6 Jur. N. S. 281; 8 W. R. 265 . . . . .	153
Thorby v. Yeats, 1 Y. & C. C. C. 438 . . . . .	223
Thorndike v. Hunt, 3 D. & J. 564; 7 W. R. 246; 28 L. J. Ch. 417; 32 L. T. 346 . . . . .	304
Thornton v. Ellis, 15 Bea. 193 . . . . .	91, 94
— v. Hawley, 10 Ves. 137 . . . . .	90
— v. Howe, 31 Bea. 14; 10 W. R. 642; 8 Jur. N. S. 663; 6 L. T. N. S. 525 . . . . .	83
Thorold, Re, 14 Eq. 31; 41 L. J. Ch. 780; 20 W. R. 898 . . . . .	134
Thorpe v. Holdsworth, 7 Eq. 139; 38 L. J. Ch. 194 . . . . .	295
— v. Owen, 5 Bea. 224; 2 W. R. 208; 23 L. J. Ch. 286; 18 Jur. 641; 2 Eq. Rep. 329 . . . . .	33
Thurlow v. Mackeson, L. R. 4 Q. B. 97; 38 L. J. Q. B. 57; 19 L. T. N. S. 448; 17 W. R. 280 . . . . .	120
Thursby v. Thursby, 19 Eq. 395; 44 L. J. Ch. 289; 32 L. T. N. S. 187; 23 W. R. 500 . . . . .	91, 92, 93, 94
Thynn v. Thynn, 1 Vern. 295 . . . . .	79
Thynne v. Glengall, 2 H. L. C. 131 . . . . .	169
Tibbits v. Tibbits, 19 Ves. 657 . . . . .	53
Tibbs, Re, 17 W. R. 304 . . . . .	109
Tichener, Re, 35 Bea. 317 . . . . .	289, 291
Tickner v. Old, 18 Eq. 422; 31 L. T. N. S. 29; 22 W. R. 871 . . . . .	91, 92, 93
— v. Smith, 3 Sm. & G. 42; 3 W. R. 224; 25 L. T. 44 . . . . .	328
Tidd v. Lister, 5 Mad. 429 . . . . .	221, 273
Tierney v. Wood, 19 Bea. 330; 2 W. R. 577; 23 L. T. 266 . . . . .	25, 28
Tildesley v. Lodge, 3 Sm. & G. 543 . . . . .	299
Ting v. Leslie, 2 H. & M. 68; 4 N. R. 17; 10 L. T. N. S. 332 . . . . .	158
Titley v. Wolstenholme, 7 Bea. 425 . . . . .	23, 24
Todd v. Moorhouse, 19 Eq. 69; 32 L. T. N. S. 8; 23 W. R. 155 . . . . .	140
— v. Wilson, 9 Bea. 486 . . . . .	201
Toft v. Stephenson, 7 Ha. 1; 1 D. M. & G. 28 . . . . .	310, 316
Toller v. Attwood, 15 Q. B. 929; 20 L. J. Q. B. 40 . . . . .	7
— v. Carteret, 2 Vern. 495 . . . . .	244
Tolson v. Sheard, 5 Ch. D. 19; 16 L. J. Ch. 815; 36 L. T. N. S. 756; 25 W. R. 667 . . . . .	117
Tomson v. Judge, 3 Drew. 306; 3 W. R. 561; 19 Jur. 583; 25 L. J. 233; 5 W. R. 396 . . . . .	190
Torres v. Franco, 1 Russ. & My. 649 . . . . .	161
Tourville v. Naish, 3 P. W. 306 . . . . .	299
Townend v. Toker, 1 Ch. 446; 35 L. J. Ch. 608; 14 L. T. N. S. 531; 12 Jur. N. S. 477; 14 W. R. 806 . . . . .	35, 36

	PAGE
Townend v. Townend, 1 Giff. 201; 7 W. R. 529; 5 Jur. N. S. 506; 33 L. T. 143 . . . . .	143, 287
Townley v. Sherborn, Bridg. 35 . . . . .	238
Townsend, Ex parte, 1 Moll. 139 . . . . .	17
— v. Westacott, 2 Bea. 340 . . . . .	62
Townshend v. Townshend, 1 B. C. C. 551 . . . . .	313
Townson v. Tickell, 3 B. & A. 31 . . . . .	10, 11, 12
Trafford v. Ashton, 1 P. W. 415 . . . . .	164, 166
Travers v. Travers, 14 Eq. 275 . . . . .	243
Travis v. Illingworth, 2 Dr. & Sm. 344 . . . . .	208, 209
— v. Milne, 9 Ha. 141 . . . . .	287
Tregonwell v. Sydenham, 3 Dow. 194 . . . . .	60
Trench v. Harrison, 17 Sm. 111 . . . . .	146
— v. St. George, 1 Dr. & Walsh, 417 . . . . .	149
Trent v. Trent, 1 Dow. App. Ca. 102 . . . . .	7
Trevelyan v. Charter, 9 Bea. 140 . . . . .	191
Treves v. Townshend, 1 B. C. C. 384 . . . . .	286
Trevor v. Trevor, 13 Sim. 108; 1 H. L. C. 239 . . . . .	46, 48, 49
— v. — 1 Eq. Ca. Ab. 387; 2 B. P. C. 122 . . . . .	44
Trotter v. Watson, L. R. 4 C. P. 434 . . . . .	222
Troutbeck v. Boughey, 2 Eq. 534; 35 L. J. Ch. 840; 12 Jur. N. S. 543 . . . . .	252, 259
Trowell v. Shenton, 8 Ch. D. 318; 47 L. J. Ch. 738; 38 L. T. N. S. 369 . . . . .	45
Trower v. Knightley, 6 Mad. 134 . . . . .	116
Truell v. Tysson, 21 Bea. 437 . . . . .	116
Trumper v. Trumper, 14 Eq. 315; 8 Ch. 870; 42 L. J. Ch. 641; 29 L. T. N. S. 86; 21 W. R. 692 . . . . .	78
Trutch v. Lamprell, 20 Bea. 116 . . . . .	17
Tryon, Re, 7 Bea. 496 . . . . .	11
Tubbs v. Broadwood, 2 R. & My. 487 . . . . .	305
Tucker v. Burrow, 2 H. & M. 515 . . . . .	65
Tuite v. Bermingham, L. R. 7 H. L. 634; 24 W. R. 540 . . . . .	157
Tullett v. Armstrong, 1 Bea. 1; 4 M. & Cr. 405; 4 Bea. 319 247, 248, 250, 251, 260, 263, 266 . . . . .	
Tunstall, Re, 4 D. G. & Sm. 421 . . . . .	212, 213
Turner v. Buck, 18 Eq. 301; 43 L. J. Ch. 583; 22 W. R. 748 . . . . .	114, 116
— v. Corney, 5 Bea. 515 . . . . .	18
— v. Harvey, Jac. 178 . . . . .	122
— v. Martin, 7 D. M. & G. 429 . . . . .	39
— v. Maule, 3 D. G. & Sm. 497; 15 Jur. 761 . . . . .	210, 236
— v. Sargent, 17 Bea. 515; 2 W. R. 50; 22 L. T. 129 . . . . .	49, 50
— v. Turner, 30 Bea. 414 . . . . .	113
— v. — 4 Sim. 430 . . . . .	172

	PAGE
Turner <i>v.</i> Turner, 1 J. & W. 39 . . . . .	284
Turpin, <i>Ex parte</i> , 1 D. & C. 120 . . . . .	219
Turvin <i>v.</i> Newcome, 3 K. & J. 16; 5 W. R. 35; 3 Jur. N. S. 203 . . . . .	154
Tweeddale <i>v.</i> Tweeddale, 7 Ch. D. 633 . . . . .	105
Twopeny <i>v.</i> Peyton, 10 Sim. 487 . . . . .	177
Tylee <i>v.</i> Tylee, 17 Bea. 583 . . . . .	274
Tyler <i>v.</i> Lake, 2 R. & My. 183 . . . . .	253, 256
Tyrrell <i>v.</i> Hope, 2 Atk. 561 . . . . .	256
Tyson, <i>Ex parte</i> , 1 Jur. 281, 472 . . . . .	243
UMBERS <i>v.</i> Jaggard, 9 Eq. 200; 18 W. R. 283 . . . . .	157
Underwood <i>v.</i> Hatton, 5 Bea. 36 . . . . .	40
— Re, 3 K. & J. 745 . . . . .	210
— <i>v.</i> Stevens, 1 Mer. 712 . . . . .	18, 19, 334
— <i>v.</i> Trower, W. N., 1867, 83 . . . . .	229
Uniacke, Re, 1 J. & L. 1 . . . . .	11, 13
Upjohn <i>v.</i> Upjohn, 7 Bea. 59 . . . . .	147
Urch <i>v.</i> Walker, 3 M. & Cr. 702; 7 L. J. Ch. 292 . . . . .	13, 14
Uvedale <i>v.</i> Ettrick, 2 Ch. Ca. 130 . . . . .	216
VACHELL <i>v.</i> Roberts, 32 Bea. 140 . . . . .	92
Vance <i>v.</i> Vance, 1 Bea. 605 . . . . .	62
Vane <i>v.</i> Vane, 8 Ch. 383; 42 L. J. Ch. 299; 28 L. T. N. S. 320; 21 W. R. 252 . . . . .	295, 296, 322
Vallis, Re, Rolls, 22nd July, 1807 . . . . .	22
Vandenberg <i>v.</i> Palmer, 4 K. & J. 204 . . . . .	33
Vann <i>v.</i> Barnett, 2 B. C. C. 157 . . . . .	280
Varlo <i>v.</i> Faden, 27 Bea. 255; 1 D. F. & J. 211; 29 L. J. Ch. 230; 8 W. R. 107; 6 Jur. N. S. 257; 1 L. T. N. S. 176 . . . . .	154, 155
Vaughan <i>v.</i> Buck, 1 Ph. 75 . . . . .	92, 94
— <i>v.</i> Burslem, 3 B. C. C. 101 . . . . .	51
— <i>v.</i> Vanderstegen; 2 Drew. 165; 2 W. R. 293, 599, 642 . . . . .	257, 260, 263, 266
Vaughton <i>v.</i> Noble, 30 Bea. 34 . . . . .	335
Venables <i>v.</i> Morris, 7 T. R. 342 . . . . .	9
Verney <i>v.</i> Verney, 2 Ed. 26 . . . . .	163
— <i>v.</i> — Amb. 88; 1 Ves. Sen. 429 . . . . .	78, 148, 149
Versturme <i>v.</i> Gardiner, 17 Bea. 338 . . . . .	138
Vickers <i>v.</i> Cowell, 1 Bea. 529 . . . . .	69
— <i>v.</i> Scott, 3 M. & K. 500 . . . . .	97, 115
Vickery <i>v.</i> Evans, 33 Bea. 376; 33 L. J. Ch. 261; 10 Jur. N. S. 30 . . . . .	142, 143, 144

	PAGE
Vidler <i>v.</i> Parrott, 12 W. R. 976 ; 4 N. R. 392 ; 10 L. T. N. S. 686	136
Vigrass <i>v.</i> Binfield, 3 Mad. 62	136, 275
Vincent <i>v.</i> Newcombe, Younge, 599	92, 93
Viner <i>v.</i> Vaughan, 2 Bea. 466	94
Viney <i>v.</i> Chaplin, 2 D. & J. 468 ; 27 L. J. Ch. 34 ; 28 L. J. Ch. 164 ; 4 Jur. N. S. 619 ; 6 W. R. 302, 562 ; 31 L. T. 142	18
Vyse <i>v.</i> Foster, 8 Ch. 309 ; L. R. 7 H. L. 318 ; 44 L. J. Ch. 37	106, 107, 285, 286, 287
WACE <i>v.</i> Mallard, 21 L. J. Ch. 355 ; 16 Jur. 492	53, 57
Wackerbarth <i>v.</i> Powell, Buck. 495	17
Wadham <i>v.</i> Rigg, 1 Dr. & Sm. 216	282
Wagstaff <i>v.</i> Smith, 9 Ves. 520	255
Wain <i>v.</i> Egmont, 2 M. & K. 445	40
Wainford <i>v.</i> Heyl, 20 Eq. 321 ; 44 L. J. Ch. 567 ; 33 L. T. N. S. 155 ; 23 W. R. 849	264, 265, 266
Waite <i>v.</i> Littlewood, 41 L. J. Ch. 636	132, 133
Walcott <i>v.</i> Bloomfield, 4 Dr. & War. 211	159
Waldo <i>v.</i> Waldo, 7 Sim. 261 ; 12 Sim. 107	107
Waldy <i>v.</i> Gray, 20 Eq. 238 ; 44 L. J. Ch. 394 ; 31 L. T. N. S. 531 ; 23 W. R. 676	295
—— <i>v.</i> Walker, 5 Russ. 7	138
Walker, Re, 2 Ph. 630	198
—— <i>v.</i> Shore, 19 Ves. 387	94, 115, 147
—— <i>v.</i> Smallwood, Amb. 676	113, 129
—— <i>v.</i> Symonds, 3 Swans. 1	136, 229, 237, 330, 333, 334, 336
—— <i>v.</i> Wetherell, 6 Ves. 473	176
—— <i>v.</i> Woodward, 1 Russ. 107	287
Wall <i>v.</i> Bright, 1 J. & W. 494	23, 72
Wallace <i>v.</i> Anderson, 16 Bea. 533	178
Walley <i>v.</i> Walley, 1 Vern. 484	77, 78
Wallgrave <i>v.</i> Tebbs, 2 K. & J. 323 ; 4 W. R. 194 ; 25 L. J. Ch. 241 ; 26 L. T. N. S. 147 ; 20 Jur. N. S. 83	80, 81, 82
Wallis <i>v.</i> Birks, L. R. 5 C. P. 222	222
Wallwyn <i>v.</i> Coutts, 3 Mer. 707	41
—— <i>v.</i> Lee, 9 Ves. 24	295
Walpole <i>v.</i> Conway, Barn. 153	169
Walsh <i>v.</i> Gladstone, 14 Sim. 2	213
—— <i>v.</i> Walsh, 1 Drew. 64	179
Walsham <i>v.</i> Stainton, 1 D. J. & Sm. 678 ; 33 L. J. Ch. 68	187
—— <i>v.</i> —— 1 H. & M. 322	335
Walter <i>v.</i> Hodge, 2 Swans. 104	32
Walters <i>v.</i> Woodbridge, 7 Ch. D. 504 ; 47 L. J. Ch. 516 ; 26 W. R. 469	202

	PAGE
Want <i>v.</i> Stallibras, L. R. 8 Ex. 175; 42 L. J. Ch. 108; 21 W. R. 685	116
Warburton <i>v.</i> Farn, 16 Sim. 625	119
— <i>v.</i> Sandys, 14 Sim. 622	214
Ward <i>v.</i> Audland, 8 Sim. 579	30
— <i>v.</i> Butler, 2 Moll. 533	13
— <i>v.</i> Hipwell, 3 Giff. 547; 6 L. T. N. S. 238	15
— Re, 7 Ch. 729; 42 L. J. Ch. 4; 27 L. T. N. S. 668; 20 W. R. 1024	180
— <i>v.</i> Turner, 1 W. & T. L. C. 983	34
Warde <i>v.</i> Aeyre, 2 Bulst. 323	99
— Re, 2 J. & H. 191	133
Wardell <i>v.</i> Wardell, 4 B. C. C. 286	165
Ware <i>v.</i> Polhill, 11 Ves. 257	116, 168
— Re, 20 W. R. 142	108
Waring <i>v.</i> Waring, 3 Ir. Ch. R. 331	87, 142
Warman <i>v.</i> Seaman, 2 Free. 308	60
Warne <i>v.</i> Routledge, 18 Eq. 497; 43 L. J. Ch. 604; 30 L. T. N. S. 857; 22 W. R. 750	257, 259
Warr <i>v.</i> Warr, Pr. Ch. 213	166, 167, 168
Warren <i>v.</i> Warren, 1 B. C. C. 305	169
Warrick <i>v.</i> Warrick, 3 Atk. 291	45, 46
Warriner <i>v.</i> Rodgers, 16 Eq. 340; 42 L. J. Ch. 581; 28 L. T. N. S. 863; 21 W. R. 766	27, 28, 30, 34
Warter <i>v.</i> Anderson, 11 Ha. 301; 1 W. R. 493; 21 L. T. N. S. 219	215, 236
— <i>v.</i> Hutchinson, 1 S. & S. 276	164
Warwick <i>v.</i> Richardson, 10 M. & W. 284	207
Waterer <i>v.</i> Waterer, 15 Eq. 402; 21 W. R. 508	71
Waterhouse <i>v.</i> Stansfield, 9 Ha. 234; 10 Ha. 254	245
Waters <i>v.</i> Bailey, 2 Y. & C. C. C. 219	75
— <i>v.</i> Groom, 11 Cl. & F. 684	188
Watkins <i>v.</i> Cheek, 2 S. & S. 199	126, 129, 298
— Ex parte, 2 Mont. & A. 348	219
— <i>v.</i> Frederick, 11 H. L. C. 358	6, 8
— <i>v.</i> Weston, 3 D. J. & Sm. 434; 32 Bea. 238; 32 L. J. Ch. 609; 11 W. R. 408; 8 L. T. N. S. 406	252
Watson, Ex parte, 2 V. & B. 414	219
— <i>v.</i> Hayes, 5 M. & Cr. 125	58
— <i>v.</i> Knight, 19 Bea. 369	37, 38
— <i>v.</i> Pearson, 2 Exch. 593; 18 L. J. Ex. 46	5
— <i>v.</i> Saul, 1 Giff. 188; 7 W. R. 197; 5 Jur. N. S. 404; 32 L. T. 218	308
— <i>v.</i> Woodman, 20 Eq. 721; 45 L. J. Ch. 57; 24 W. R. 47	309



	PAGE
Watt v. Wood, 2 Dr. & Sm. 56 . . . . .	155
Watts v. Ball, 1 P. W. 108 . . . . .	271
— v. Girdlestone, 6 Bea. 188 . . . . .	137
— Re, 9 Ha. 106 . . . . .	210
Way v. East, 2 Drew. 44 ; 2 W. R. 114 ; 23 L. J. Ch. 209 ; 22 L. T. 192 ; 2 Eq. Rep. 275 . . . . .	82
— Re, 2 D. J. & Sm. 365 ; 34 L. J. Ch. 49 ; 11 L. T. N. S. 495 ; 10 Jur. N. S. 1166 ; 13 W. R. 149 . . . . .	28, 34, 288
Weale v. Ollive, 17 Bea. 252 . . . . .	31
Wearing v. Wearing, 23 Bea. 99 . . . . .	93
Weatherall v. Thornburgh, 8 Ch. D. 261 ; 47 L. J. Ch. 658 ; 26 W. R. 593 . . . . .	156
Webb v. Byng, 8 D. M. & G. 633 . . . . .	234
— v. Ledsam, 1 K. & J. 385 . . . . .	139
— v. Lugar, 2 Y. & C. Ex. Ca. 247 . . . . .	77
— v. Rorke, 2 Sch. & L. 673 ; 1 B. & B. 164 . . . . .	186
— v. Shaftesbury, 7 Ves. 480 . . . . .	200, 204, 205, 280
— v. Webb, 16 Sim. 55 ; 17 L. J. Ch. 13 . . . . .	16
— v. Webb, 2 Bea. 493 . . . . .	154
Webster v. Webster, 31 Bea. 393 ; 1 W. R. 509 ; 21 L. T. N. S. 219 . . . . .	290
Wedderburn v. Wedderburn, 4 M. & Cr. 41 . . . . .	185, 237, 318
— v. — 22 Bea. 84 . . . . .	287
Wedgwood v. Adams, 6 Bea. 600 . . . . .	120
Weeding, Re, 4 Jur. N. S. 707 . . . . .	211, 216
Wellesley v. Beaufort, 2 Russ. 29 . . . . .	174
— v. Mornington, 2 K. & J. 153 . . . . .	160
— v. Withers, 4 E. & B. 750 ; 24 L. J. K. B. 134 . . . . .	13
Wells v. Malbon, 31 Bea. 48 ; 31 L. J. Ch. 344 ; 8 Jur. N. S. 249 . . . . .	205
— v. Porter, 2 Bing. N. C. 730 . . . . .	139
West v. Errissey, 2 B. P. C. 225 ; 2 P. W. 349 . . . . .	45, 46
— v. Jones, 1 Sim. N. S. 205 . . . . .	119
Welstead v. Colville, 28 Bea. 537 . . . . .	214
Westbrooke, Re, 2 Ph. 631 . . . . .	198, 202
West Hartlepool Iron Co., Re, 1 Ch. D. 664 ; 45 L. J. Ch. 342 ; 34 L. T. N. S. 164 ; 24 W. R. 508 . . . . .	140
Westmeath v. Westmeath, 1 Dow & C. 519 . . . . .	84
Westmoreland v. Holland, W. N. 1871, 124 . . . . .	14, 89
Wetherell v. Langston, 1 Exch. 634 ; 17 L. J. Ex. 338 . . . . .	12
Wheatley v. Purr, 1 Keen, 551 . . . . .	28, 33
Wheeler v. Warner, 1 S. & S. 304 . . . . .	105
Whelpdale v. Cookson, 1 Ves. Sen. 9 . . . . .	182, 188
Whichcote v. Lawrence, 3 Ves. 752 . . . . .	195

	PAGE
Whistler v. Newman, 4 Ves. 129 . . . . .	258
Whitecomb v. Minchin, 5 Mad. 91 . . . . .	182
Whitmore v. Turquand, 3 D. F. & J. 110 . . . . .	37
White v. Barton, 18 Bea. 192 . . . . .	14
— v. Briggs, 15 Sim. 33 ; 2 Ph. 583 . . . . .	53, 55
— v. Carter, 2 Ed. 366 . . . . .	49
— v. Cohen, 1 Dr. 312 . . . . .	265
— v. Cuddon, 8 Cl. & F. 766 . . . . .	113, 121
— v. Foljambe, 11 Ves. 343 . . . . .	120
— and Hindle, Re, 7 Ch. D. 201 ; 47 L. J. Ch. 85 ; 26 W. R. 124 ; 37 L. T. N. S. 574 . . . . .	9
— v. Jackson, 15 Bea. 191 . . . . .	228
— v. Lincoln, 8 Ves. 363 . . . . .	99
— v. McDermott, I. R. 7 C. L. 1 . . . . .	11, 12
— v. Parker, 1 Bing. N. C. 573 ; 4 L. J. C. P. 178 . . . . .	6
— Re, Johns. 656 . . . . .	103
— v. Simmons, 6 Ch. 555 ; 40 L. J. Ch. 689 ; 19 W. R. 939 . . . . .	188
— v. Thornborough, 2 Vern. 702 . . . . .	44
— v. White, 4 Ves. 24 ; 9 Ves. 554 . . . . .	148, 149, 150
Whitmore v. Turquand, 1 J. & H. 295 ; 9 W. R. 488 ; 30 L. J. Ch. 345 ; 7 Jur. N. S. 377 ; 4 L. T. N. S. 38 . . . . .	276
Whitney v. Smith, 4 Ch. 513 ; 20 L. T. N. S. 468 ; 17 W. R. 579 143, 198	
Wickham v. Wickham, 18 Ves. 419 . . . . .	9
Wigg v. Wigg, 1 Atk. 381 . . . . .	299
Wightwick v. Lord, 6 H. L. C. 217 ; 5 W. R. 713 ; 3 Jur. N. S. 699 . . . . .	91
Wiglesworth v. Wiglesworth, 16 Bea. 269 . . . . .	275, 276
Wilbraham v. Scarisbrick, 1 H. L. C. 167 . . . . .	159
Wilcocks v. Hannington, 5 Ir. Ch. R. 38 . . . . .	31
Wild v. Milne, 26 Bea. 504 . . . . .	71, 188
Wilday v. Sandys, 7 Eq. 455 ; 17 W. R. 603 . . . . .	92
Wilding v. Bolder, 21 Bea. 222 . . . . .	211
— v. Richards, 1 Coll. 655 . . . . .	38, 41
Wiles v. Cooper, 9 Bea. 294 ; 15 L. J. Ch. 129 . . . . .	16
— v. Gresham, 2 Drew. 258 ; 5 D. M. & G. 770 ; 1 Eq. Rep. 348 ; 2 Eq. Rep. 560 ; 3 Eq. Rep. 116 ; 2 W. R. 35 ; 3 W. R. 87 ; 24 L. J. Ch. 264 . . . . .	87, 89, 279, 280, 327
Wilkes v. Steward, G. Coop. 6 . . . . .	136
Wilkins v. Fry, 1 Mer. 244 . . . . .	121
— v. Hogg, 3 Giff. 116 ; 8 Jur. N. S. 25 . . . . .	238, 239
— v. Stevens, 1 Y. & C. C. C. 431 . . . . .	305
Wilkinson v. Bewick, 4 Jur. N. S. 1010 . . . . .	98
— v. Duncan, 23 Bea. 469 ; 5 W. R. 398 ; 26 L. J. Ch. 495 ; 3 Jur. N. S. 530 . . . . .	95, 115

	PAGE
Wilkinson <i>v.</i> Malin, 2 Tyr. 544 ; 1 L. J. Ex. 234 . . . . .	15
— <i>v.</i> Parry, 4 Russ. 272 . . . . .	207, 333, 334
— <i>Re</i> , 9 Eq. 343 . . . . .	134
— <i>Re</i> , 12 W. R. 522 . . . . .	211
— <i>v.</i> Wilkinson, 2 S. & S. 237 . . . . .	202
Wilks <i>v.</i> Groom, 3 Drew. 584 ; 4 W. R. 697 ; 27 L. T. N. S. 270 ; 20 Jur. N. S. 681 . . . . .	98
Willats <i>v.</i> Busby, 5 Bea. 193 . . . . .	35
Willes <i>v.</i> Greenhill, 29 Bea. 376 ; 4 D. F. & J. 147 ; 31 L. J. Ch. 1 ; 5 L. T. N. S. 336 ; 7 Jur. N. S. 1134 ; 10 W. R. 33 . . . . .	291
Willeter <i>v.</i> Dobie, 2 K. & J. 647 . . . . .	252
Willett <i>v.</i> Blanford, 1 Ha. 253 . . . . .	287
Williams <i>v.</i> Ailesbury Railway Co., 9 Ch. 684 ; 43 L. J. Ch. 825 ; 28 L. T. N. S. 547 . . . . .	106
— <i>v.</i> Corbet, 8 Sim. 349 . . . . .	55, 200
— <i>v.</i> Longfellow, 3 Atk. 581 . . . . .	11
— <i>v.</i> Nixon, 2 Bea. 472 ; 9 L. J. Ch. 269 . . . . .	13, 18
— <i>v.</i> Powell, 15 Bea. 468 . . . . .	287
Williams <i>Re</i> , 4 K. & J. 87 . . . . .	208
— <i>v.</i> Williams, 32 Bea. 370 . . . . .	62, 66
Williamson <i>v.</i> Codrington, 1 Ves. Sen. 511 . . . . .	31, 36
— <i>v.</i> Naylor, 3 Y. & C. Ex. 208 . . . . .	39
— <i>v.</i> Seaber, 3 Y. & C. 717 . . . . .	192
Willis <i>v.</i> Hiscox, 4 M. & Cr. 197 . . . . .	223
— <i>v.</i> Kibble, 1 Bea. 559 . . . . .	199, 200
— <i>v.</i> Kymer, 7 Ch. D. 181 ; 38 L. T. N. S. 207 . . . . .	57
— <i>v.</i> Willis, 2 Atk. 71 . . . . .	67, 68
Wills <i>v.</i> Sayers, 4 Mad. 409 . . . . .	257
Willock <i>v.</i> Noble, L. R. 7 H. L. 580 ; 44 L. J. Ch. 345 ; 23 W. R. 809 ; 32 L. T. N. S. 410 . . . . .	257, 259
Wilmot <i>v.</i> Pike, 5 Ha. 14 . . . . .	291
Wilson <i>v.</i> Allen, 1 J. & W. 611 . . . . .	122
— <i>v.</i> Bennett, 20 L. J. Ch. 126 . . . . .	23
— <i>v.</i> Clapham, 1 J. & W. 38 . . . . .	73
— <i>v.</i> Halliley, 1 R. & M. 590 . . . . .	155
— <i>v.</i> Moore, 1 M. & K. 126 . . . . .	297, 298, 330
— <i>Re</i> , 2 J. & H. 619 ; 32 L. J. Ch. 191 ; 7 L. T. N. S. 772 ; 11 W. R. 295 . . . . .	73
— <i>v.</i> Spencer, 3 P. W. 172 . . . . .	160
— <i>v.</i> Wilson, 1 Sim. N. S. 288 ; 2 Keen, 249 . . . . .	153, 273
Wiltshire <i>v.</i> Rabbits, 14 Sim. 76 . . . . .	291
Wilton <i>v.</i> Hill, 25 L. J. Ch. 156 . . . . .	268
Windham <i>v.</i> Graham, 1 Russ. 331 . . . . .	161
Wingrave <i>v.</i> Palgrave, 1 P. W. 401 . . . . .	161

	PAGE
Winslow <i>v.</i> Tighe, 2 B. & B. 196 . . . . .	77
Winter <i>v.</i> Rudge, 15 Sim. 596 . . . . .	205
Wise, Re, 1 R. 3 Eq. 599 . . . . .	214
— <i>v.</i> Wise, 2 J. & L. 403 . . . . .	13
Witchcot <i>v.</i> Souch, 1 Rep. in Ch. 97 . . . . .	116
Withers <i>v.</i> Withers, Amb. 151 n. . . . .	25, 63, 67
Withington <i>v.</i> Withington, 16 Sim. 104 . . . . .	210
Wolley <i>v.</i> Jenkins, 23 Bea. 56; 5 W. R. 281; 28 L. T. N. S. 362; 3 Jur. N. S. 321 . . . . .	117
Wood <i>v.</i> Birch, Sugd. V. & P. 700 . . . . .	69
— <i>v.</i> Cox, 2 M. & Cr. 684 . . . . .	53
— <i>v.</i> Downes, 18 Ves. 128 . . . . .	194
— <i>v.</i> Hardisty, 2 Coll. 542 . . . . .	333
— <i>v.</i> Harman, 5 Mad. 368 . . . . .	125
— <i>v.</i> Patteson, 10 Bea. 541 . . . . .	103
— <i>v.</i> Weightman, 13 Eq. 434; 26 L. T. N. S. 385; 20 W. R. 459 . . . . .	19
Woodcock <i>v.</i> Dorset, 3 B. C. C. 569; 3 V. & B. 82 n. . . . .	161
Woodford <i>v.</i> Charnley, 28 Bea. 96 . . . . .	30
Woodgate, Re, 5 W. R. 448 . . . . .	208
Woodhouse <i>v.</i> Meredith, 1 J. & W. 204 . . . . .	182
— <i>v.</i> Woodhouse, 8 Eq. 514; 38 L. J. Ch. 481; 20 L. T. N. S. 209; 17 W. R. 583 . . . . .	323
Woodroff <i>v.</i> Johnston, 4 I. Ch. R. 319 . . . . .	31
Woodward <i>v.</i> Woodward, 3 D. J. & Sm. 672; 11 W. R. 1007 . . . . .	248, 249
Woolmore <i>v.</i> Burrows, 1 Sim. 512 . . . . .	48
Worrall <i>v.</i> Harford, 8 Ves. 8 . . . . .	237
Worthington <i>v.</i> Curtis, 1 Ch. D. 419 . . . . .	63
— <i>v.</i> Evans, 1 S. & S. 165 . . . . .	12, 104
— <i>v.</i> McCraer, 23 Bea. 83 . . . . .	176
Wray <i>v.</i> Steele, 2 V. & B. 388 . . . . .	67, 68
Wren <i>v.</i> Kirton, 11 Ves. 377 . . . . .	99
Wrey <i>v.</i> Smith, 14 Sim. 202 . . . . .	94
Wright <i>v.</i> Atkyns, T. & R. 143 . . . . .	56
— <i>v.</i> Chard, 4 Dr. 673; 8 W. R. 35, 122, 334; 29 L. J. Ch. 82, 415; 6 Jur. N. S. 476; 1 L. T. N. S. 182; 2 L. T. N. S. 104 . . . . .	323
— <i>v.</i> Lambert, 6 Ch. D. 649 . . . . .	115
— <i>v.</i> Pearson, 1 Eden, 125 . . . . .	2, 8
— Re, 3 K. & J. 419 . . . . .	236
— <i>v.</i> Wright, 2 J. & H. 647 . . . . .	247
Wrigley <i>v.</i> Sykes, 21 Bea. 337; 4 W. R. 228; 25 L. J. Ch. 492; 26 L. T. N. S. 252; 20 Jur. N. S. 78 . . . . .	128
Wroe <i>v.</i> Seed, 4 Giff. 425 . . . . .	285
Wyatt <i>v.</i> Sharratt, 3 Bea. 498 . . . . .	141, 275

	PAGE
Wych v. East India Co., 3 P. W.	309
— v. Packington, 3 B. P. C.	44
Wyche, Re, 11 Bea.	209
Wylly, Re, 28 Bea. 458; 8 W. R.	645
Wyman v. Carter, 12 Eq. 309; 40 L. J. Ch.	559
Wynch v. Wynch, 1 Cox,	433
Wynne v. Hawkins, 1 Bro. C. C.	179
— v. Humberston, 27 Bea. 421; 28 L. J. Ch.	281
Wynter v. Bold, 1 S. & S.	507
YARDLEY v. Holland, 20 Eq. 428; 23 W. R.	301
Yate v. Fettiplace, Pr. & Ch.	140
Yates v. Yates, 28 Bea.	637
York Buildings v. Mackenzie, 8 B. P. C. 42, 70	
Youde v. Cloud, 18 Eq. 634; 44 L. J. Ch. 93; 22 W. R.	764
Young v. Martin, 2 Y. & C. C. C.	582
— v. Waterpark, 15 L. J. Ch.	63
Younghusband v. Gisborne, 1 Coll.	401



# A DIGEST

## OF THE

# PRINCIPLES OF THE LAW

### RELATING TO

# TRUSTS AND TRUSTEES.

---

## CHAPTER I.

### OF VESTING THE LEGAL ESTATE IN THE TRUSTEE.

#### I.—*By Will.*

(1.) IN devises of freeholds, the analogy of the Statute of Uses, as an index of the intention of the testator, will be followed, so as to vest a sufficient portion of the legal estate in him to whom the use is limited. The ground of this rule is “that the will shews an intention that the same rules which the Statute of Uses made applicable to settlements of real estate should be applied to the gifts or devises by will”: *Baker v. White*, 20 Eq. 171.

Devises of freeholds construed by analogy to Statute of Uses.

(2.) In devises of copyholds, which are not affected by the Statute of Uses, the analogy above referred to fails, and thus a devise of copyholds to A. upon trust for, or to the use of, or to transfer to B. vests the legal estate in A.: *Baker v. White*, 20 Eq. 166; *Allen v. Bewsey*, 7 Ch. D. 453, 458; *Doe v. Nicholls*, 1 B. & C. 336; and see *Doe v. Barthrop*, 5 Taunt. 382.

Devises of copyholds.

(3.) A trust of leaseholds which are also not within the Statute, is not executed by it, and the term will pass to the trustee in the same way as copyholds, although no duty or office is thrown upon him requiring that he should

Leaseholds treated similarly to copyholds.

have the legal ownership: 2 Jarm. Wills, 285; *Stevenson v. Mayor of Liverpool*, L. R. 10 Q. B. 81; *Baker v. White*, 20 Eq. 166.

Extent of term taken by trustees.

But if the purposes of the trust render it unnecessary that the trustees should take the whole term, *e. g.*, a direction to executors (even without a direct bequest to them) to apply the rents during a minority or a life, they will have the legal estate only until the infant attains 21, or until the life drops: 2 Jarm. Wills, 285, 286; *Stevenson v. Mayor of Liverpool*, *supra*.

Legal estate vests if duties to be performed.

But a devise to trustees (with or without words of inheritance) to the use of, or upon trust for another, will not be construed in any case according to the analogy of the Statute of Uses, or vest the legal estate in the trustees unless they have some duty to perform, subject to which others are to have the benefit of the estate: *Wright v. Pearson*, 1 Eden, 125.

Duration of legal estate independent of tenure.

With regard to the quantum of the legal estate the law is the same with regard to freeholds, copyholds, and leaseholds: *Baker v. White*, 20 Eq. 166.

Trustees do not take the legal estate under the following devises:—

“A. to use of B.”

To A. to the use of, or in trust for, B. *simpliciter*: *Baker v. White*, 20 Eq. 171.

“Permit and suffer.”

Upon trust to “permit and suffer” another to receive the rents: *Baker v. White*, 20 Eq. 171; and see the note to *Carwardine v. Carwardine*, 1 Ed. 36, in which the old cases are collected; *Doe v. Bolton*, 11 A. & E. 188.

“pay or permit.”

Upon trust “to pay or permit and suffer” another to receive the rents: *Baker v. White*, *supra*; *Doe v. Biggs*, 2 Taunt. 109.

Charge of debts,

Upon trusts coupled with a charge of debts, without a direction to the trustees to pay them, and without an appointment of the trustees as executors: *Kenrick v. Beauchlerck*, 3 B. & P. 178; *Doe v. Ewart*, 7 A. & E. 668; see *Creaton v. Creaton*, 3 Sm. & G. 386, 392.

where

Upon trusts in a case in which the testator himself has



only an equitable estate, where no estate at all passes to the trustee : 2 Jarm. Wills, 286.

testator  
has no  
legalestate.  
Where  
trusts  
fail.

Upon trusts which have ceased to require performance, or fail—in which case there is a resulting trust for the heir of the testator : *Robinson v. Cuming*, 1 Atk. 473 ; *Cox v. Parker*, 22 Bea. 168 ; 25 L. J. Ch. 873.

Trustees take the legal estate under the following devises :—

Upon trust to receive and pay rents to another : *Doe v. Homfray*, 6 A. & E. 206.

To receive  
and pay.

Upon trust to pay the clear rents after payment of rates and taxes : *Shapland v. Smith*, 1 B. C. C. 74.

To pay  
taxes.

Upon trust to pay the “net” rents to the *cestui que trust* : *Barker v. Greenwood*, 4 M. & W. 421.

To pay  
“net”  
rents.

Upon trust to permit another to receive rents, but so that his receipts shall be with the approbation of the trustees : *Gregory v. Henderson*, 4 Taunt. 772.

Trustees’  
approba-  
tion to re-  
ceipts.

Upon trust to permit another to receive rents, but with a power to the trustees to give receipts : see *Baker v. White*, 20 Eq. 166. [In that case copyholds were included in the devise, and the power was held to apply to them only, as the trustees took the legal estate in them at all events.]

Trustees  
to give  
receipts.

Upon trust to permit a *feme covert* to receive the rents to her separate use : *Harton v. Harton*, 7 T. R. 652 ; *Nevil v. Saunders*, 1 Vern. 415 ; *Browne v. Whiteway*, 8 Ha. 145, in which *Harton v. Harton* is commented on.

To permit  
feme to  
receive.

Upon trust to receive the rents and apply them annually for the maintenance of a tenant for life : *Silvester v. Wilson*, 2 T. R. 444 ; *Reynell v. Reynell*, 10 Bea. 21.

Mainte-  
nance.

Upon trust to apply rents for the maintenance of infant devisees presumptively entitled in remainder after a prior life estate : *Berry v. Berry*, 7 Ch. D. 657.

Upon trust to pay debts charged on the land, the trustees being appointed executors : *Creaton v. Creaton*, 3 Sm. & G. 386, 392.

Charge of  
debts.

To pay  
debts.

Upon trust to pay debts and legacies, without a charge and without any provision limiting the liability of the real estate to insufficiency of personalty: see *Murthwaite v. Jenkinson*, 2 B. & C. 357.

Trust till  
debts paid.

Upon trust until debts are paid: *Hitchens v. Hitchens*, 2 Vern. 403.

Till sum  
raised.

Upon trust until a sum of money is raised: *Thomason v. Mackworth*, O. Bridgm. 507; *Glover v. Monckton*, 10 Moore, 453.

### *Quantum of Estate taken.*

Wills Act,  
s. 30.  
Whole  
estate of  
testator to  
pass to  
trustee  
unless a  
less estate  
is given by  
the will.

"Where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication:" Wills Act, 1 Vict. c. 26, s. 30.

Sect. 31.  
Where  
no benefi-  
cial life  
estate is  
given, or if  
given the  
trusts re-  
quire es-  
tate be-  
yond life.

"Where any real estate shall be devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple, or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied:" *ibid.* s. 31.

Devise to  
trustees  
and their  
heirs is  
*primâ*  
*faciè* a fee.

A devise to trustees *and their heirs* upon trusts to perform certain duties and subject thereto upon trust for a tenant for life, with a devise over in the form of a legal devise in tail or in fee, is *primâ faciè* a devise of the legal estate in fee to the trustees: *Collier v. Walters*, 17 Eq. 252.

In a devise for purposes which are to last only for a certain time, the use of the word 'heirs' will not give a fee, and the devise will be cut down to the time necessary for the purposes: *Doe v. Davies*, 1 Q. B. 438; *Shaw v. Weigh*, 1 Eq. Ca. Abr. 185; *Bagshaw v. Spencer*, 1 Ves. Sen. 142.

'Heirs' does not necessarily pass a fee.

In a devise for purposes which by their nature extend over an indefinite time, the fee will not be cut down: *Collier v. Walters*, 17 Eq. 252; *Poad v. Watson*, 6 E. & B. 606.

Indefinite purposes require the fee.

If the words are such as pass a fee it lies upon those who contend for a less estate to point out such less estate on the face of the will: *Collier v. Walters*, *supra*; *Baker v. White*, 20 Eq. 174; and see s. 30 of 1 Vict. c. 26, *supra*.

Onus on those who say trustees take less estate than a fee.

"And generally where the purposes of the trust upon which the estate [whether freehold, copyhold, or leasehold] is devised to trustees, are such as not to require a fee, as for instance where the trust is to pay annuities, or to pay over rents to a party for life, there, if subject to the aforesaid trusts the estate is given over, the parties taking under such devise over have been held to take legal estates, the estate given to the trustees, even when given with words of inheritance, having been in such cases taken to have been meant to be coextensive only with the trust to be performed:" *Baker v. White*, 20 Eq. 166; *Watson v. Pearson*, 2 Exch. 593; *Blagrove v. Blagrove*, 4 Exch. 550.

Estate of trustees coextensive with purposes of trust.

Trustees have been held to take the fee under the following devises:—

In a devise to trustees (with or without "heirs") upon trust to sell and convey, or mortgage, for the purpose of making payments: *Doe v. Ewart*, 7 A. & E. 636; *Bagshaw v. Spencer*, 1 Ves. Sen. 142; *Rackham v. Siddall*, 1 Macn. & G. 607; *Cropton v. Davies*, L. R. 4 C. P. 159.

Trust for sale or mortgage.

Or, though the trust to convey arises only on the death

Power of

sale sub-  
ject to life  
estate.

of the tenant for life, if the duties to be performed by the trustees are such as to make it necessary that they should take the fee: *Doe v. Bolton*, 11 A. & E. 188.

Indefinite  
power of  
sale.

Where the power of sale is not confined to so much as is sufficient to pay the debts, and there is no devise over of the unsold part, the trustees retain the fee they took in order to sell: *Doe v. Edlin*, 4 A. & E. 582; *Gibson v. Bott*, 7 Ves. 95.

Indefinite  
power of  
leasing.

In a devise to trustees and their heirs with a power to lease for undefined periods, *e.g.*, "for any term they should think proper" (*Doe v. Willan*, 2 B. & Ald. 84), or, "as shall be consistent with their duty and trust, or otherwise" (*Doe v. Walbank*, 2 B. & Ad. 554).

Or, in such a devise with a power of leasing, with the duty of paying taxes and keeping premises in repair: *White v. Parker*, 1 Bing. N. C. 573.

In *Collier v. Walters*, 17 Eq. 252, Jessel, M. R., cited *Doe v. Willan* as an express authority that where there is an indefinite power of leasing the trustees take an estate and not merely a leasing power, and that that estate, being an indefinite one, must be a fee in order to allow a leasehold interest to be carved out of it. If this is so, the cases of *Ackland v. Lutley*, 9 A. & E. 879, 1 Per. & D. 636, and *Ackland v. Pring*, 2 M. & Gr. 937, 3 Scott, N. R. 297, must be treated as decided on questionable grounds; but such cases may now be taken as controlled by ss. 30 and 31 of the Wills Act, for an indefinite power may, of course, extend beyond the life of a tenant for life.

Taking sur-  
renders.

Or, where there is a power to the trustees to take surrenders of leases: *Blagrove v. Blagrove*, 4 Ex. 550.

Cutting  
timber.  
Contingent  
remain-  
ders.

Or, to cut timber: *Collier v. Walters*, *supra*.

Or, to preserve contingent remainders which may extend beyond the life of the tenant for life: *Watkins v. Frederick*, 11 H. L. C. 358; but see *Cunliffe v. Brancker*, 3 C. D. 393.

To pay  
debts and  
legacies.

In cases in which after a devise to trustees and their heirs they are directed to pay debts, or debts and legacies: *Doe v. Ewart*, 7 A. & E. 636; *Robinson v. Cuming*, 1 Atk.

473; *Creaton v. Creaton*, 3 Sm. & G. 386; *Smith v. Smith*, 11 C. B. N. S. 121; *Collier v. Walters*, 17 Eq. 252. This would not be the case if another possible interest can be shewn on the face of the will, *e.g.* an estate *pur autre vie* with a further chattel interest till the debts are paid. [*Doe v. Cafe*, 7 Exch. 675; *Cordal's Case*, Cro. Eliz. 316; *Carter v. Barnadiston*, 1 P. W. 505; *Doe v. Simpson*, 5 East, 162, are within the operation of the sections of the Wills Act above quoted.]

In a devise of the "entire property" to executors for the indefinite purposes of the testator's bounty, the fee simple lands of the testator will pass to the executors: *Murphy v. Donnelly*, 1 R. 4 Eq. 111.

Or by a devise to "trustees of inheritance for the execution hereof," in a case where the testator must have known that his personal estate would be insufficient to pay the annuities he gave: *Trent v. Trent*, 1 Dow App. C. 102.

On an appointment of A. and B. "as also their heirs and assigns," they take the legal fee and are not mere supervisors of the will: *Bennett v. Bennett*, 2 Dr. & Sm. 272; and see *Doe v. Pratt*, 6 A. & E. 180.

Where some of the trusts require that the trustees should take the legal estate while others do not, the trustees will be held to take the legal estate throughout, though such trusts are not in each case preceded by devises in the form of legal estates to the trustees: *Hawkins v. Luscombe*, 2 Swans. 391; *Brown v. Whiteway*, 8 Ha. 145; *Harton v. Harton*, 7 T. R. 652; *Toller v. Attwood*, 15 Q. B. 929.

Where there are annuities which may continue after the death of the trustees: *Doe v. Woodhouse*, 4 T. R. 89.

Trustees have been held to take less than the fee in the following cases:—

On a devise of copyholds to trustees upon trust to transfer them to another—in which case they do not

"Entire property."

"Trustees of inheritance."

To trustees "as also" their heirs, &c.

Non-repetition of devise to trustees after legal devises.

Continuing annuities.

To "transfer" copyholds.

require the legal estate at all: *Doe v. Nicholls*, 1 B. & C. 336.

Prior life estate.

The fee taken by the trustees for the purpose of a power of sale may be subject to a prior legal life estate: *Doe v. Bolton*, 11 A. & E. 188.

Definite leasing power.

Where a power of leasing is restricted to the time when the trust ceases, and nothing else remains to be done, the legal estate ceases with it: *Doe v. Cafe*, 7 Exch. 675.

Estate *pur autre vie* expressly given.

If an estate *pur autre vie* is expressly given, the Court does not cut it down to a mere chattel interest, though the latter might be sufficient for the purposes of the trust: *Wright v. Pearson*, 1 Ed. 123.

Maintenance during minority.

A devise to trustees and their heirs in trust for maintenance during a minority and then to the use of the minor, gives the trustees a term until the minor attains 21: *Goodtitle v. Whitby*, 1 Burr. 226; *Doe v. Nicholls*, 1 B. & Cr. 336.

Legal gifts over.

A devise in trust to pay rents to a tenant for life, with legal gifts over, gives the trustees an estate *pur autre vie* during the life of the tenant for life: *Cooke v. Blake*, 1 Exch. 220; *Playford v. Hoare*, 3 Y. & J. 175; *Adams v. Adams*, 6 Q. B. 860; *Doe v. Ironmonger*, 3 East, 533.

To preserve contingent remainders.

A trust to preserve contingent remainders is limited to the period during which such contingent remainders may arise: *Doe v. Hicks*, 7 T. R. 433; *Haddelsey v. Adams*, 22 Bea. 266; *Rochfort v. FitzMaurice*, 2 Dr. & W. 1; but see *Watkins v. Frederick*, 11 H. L. C. 358; *Saunders v. Eppe*, 9 W. R. 69.

On this subject generally there is a useful note to *Jefferson v. Morton*, 2 Wms. Saund. 11 c. n (o) and 11 c. n (r).

## II.—By Deed.

Words to be followed unless inconsistent.

In the case of limitations to trustees by deed, the Court will be guided by the strict legal meaning of the words in which such limitations are made, unless such a construction would give rise to some manifest contrariety or

contradiction, rendering a different interpretation necessary in order to effectuate the intention of the parties: *Lewis v. Rees*, 3 K. & J. 132; and see *Cooper v. Kynock*, 7 Ch. 398; see *Re White and Hindle*, 7 Ch. D. 201.

Under a deed the legal fee simple will pass to the trustees. Where fee passes.

If, after a legal limitation to a tenant for life, there is a limitation to trustees to preserve contingent remainders without adding such words as "during the life of the tenant for life": *Lewis v. Rees*, 3 K. & J. 132; *Wickham v. Wickham*, 18 Ves. 419; *Colmore v. Tyndall*, 2 Y. & J. 605; Trust estate after life estate.

[*Curtis v. Price*, 12 Ves. 89, and *Beaumont v. Salisbury*, 19 Bea. 198, are overruled by *Cooper v. Kynock*, *ubi supra*.]

In a conveyance to a trustee and his heirs upon trusts for A. for life, and after his death for his widow for life, and then for his daughter for her separate use, and then as the widow should appoint by will, with a remainder over to the use of the widow and her heirs, it was held that the trustees' fee simple was not cut down: *Cooper v. Kynock*, *supra*. Power of appointment before legal gift over.

So they must take the fee where the tenant for life has a power of appointment, by virtue of which she might introduce contingent remainders which might have been defeated without such estate being vested in the trustees: *Venables v. Morris*, 7 T. R. 342; *Rochfort v. Fitzmaurice*, 2 Dr. & W. 1.

A term given to different trustees from those to whom the fee simple is in words limited by the deed may take effect as an equitable term, and so not be inconsistent with the fee so given: *Lewis v. Rees*, *ubi supra*. Equitable term.

A power of leasing given to the tenants for life in *Lewis v. Rees* was also held not to be inconsistent with a fee in the trustees, as the leases might take effect as limitations of the legal estate by virtue of the power as in *Isherwood v. Oldknow*, 3 M. & Selw. 404. Power of leasing.

## CHAPTER II.

### OF DISCLAIMER AND ACCEPTANCE OF THE TRUST.

#### I. *Of Disclaimer.*

If trustee does not intend to act, he must disclaim.

WHENEVER a person is appointed a trustee or executor upon trust, it is advisable for him, if he does not intend to act as such, to do some act to evidence such intention.

Form of disclaimer :

As to the mode of disclaimer :—

By deed.

A deed of disclaimer is the most effectual mode of renunciation : *Stacey v. Elph*, 1 M. & K. 199 ; *Adams v. Taunton*, 5 Mad. 435 ; *Townson v. Tickell*, 3 B. & A. 31.

By release or conveyance.

But a release or conveyance to the co-trustees will, if its essence be disclaimer, be sufficient : *Nicloson v. Wordsworth*, 2 Sw. 365 ; but see *Crewe v. Dicken*, 4 Ves. 97, in which it was held that the trust remained, though the estate was conveyed away.

At the bar.

A disclaimer at the bar of the Court is good for the purpose of giving jurisdiction to appoint a new trustee : *Foster v. Dawber*, 1 Dr. & Sm. 172 ; but see *Re Ellison*, 2 Jur. N. S. 62.

By parol.

A mere parol disclaimer may be sufficient : *Bingham v. Clanmorris*, 2 Moll. 253 ; *Townson v. Tickell*, 3 B. & A. 39. In the argument in *Doe v. Harris*, 16 M. & W. 517, will be found the law on the now obsolete doctrine that disclaimer must be by matter of record and not by matters *in pais* : also that parol disclaimer was incapable of operating upon a use.

By conduct.

The conduct of a trustee in abstaining from interference



or otherwise will in a proper case be taken to amount to disclaimer : *White v. McDermott*, 1 R. 7 C. L. 1 ; *Stacey v. Elph*, 1 M. & K. 195.

The renunciation of probate as to personal estate, coupled with not acting for three years in the trusts of the real estate, has been treated as conclusive evidence of disclaimer : *Roberts v. Gordon*, 6 Ch. D. 531.

Delay in disclaiming will not necessarily be construed into acceptance : *Noble v. Meymott*, 14 Bea. 471 ; but see *Re Uniacke*, 1 J. & L. 1 ; *Re Needham*, 1 J. & L. 36.

Where a trust is imposed upon a person without his sanction he is entitled to the costs of consulting counsel as to any disclaimer he is called upon to make : *Re Tryon*, 7 Bea. 496.

After the institution of an action a trustee desiring to disclaim is in the position of an ordinary defendant disclaiming an interest, and will have his costs between party and party only : *Norway v. Norway*, 2 M. & K. 278 ; *Bray v. West*, 9 Sim. 429 ; *Heap v. Jones*, 5 W. R. 106 ; *Bulkeley v. Eglinton*, 1 Jur. N. S. 994. [*Sherratt v. Bentley*, 1 R. & M. 655, is overruled.]

The disclaimer should be in a proper form ; and the trustee should not seek to meet in his defence any of the allegations of the statement of claim : *Martin v. Persse*, 1 Moll. 146 ; but see *Benbow v. Davies*, 11 Bea. 369.

He need not go into evidence to prove that he has never acted : *Glover v. Rogers*, 11 Jur. 1000 ; unless the plaintiff delivers a reply to him : *Williams v. Longfellow*, 3 Atk. 581 ; *Ford v. Chesterfield*, 16 Bea. 516.

A person who simply refuses to do any act in the trust will be entitled to the costs of a suit to appoint new trustees : *Legg v. Mackrell*, 2 D. F. & J. 551.

As to the effect of disclaimer :—

A disclaimer does not affect the estate of the other trustees, but vests it in them exclusively : *Small v. Marwood*, 9 B. & C. 308 ; *Townson v. Tickell*, 3 B. & A. 31 ; *Browell v. Reed*, 1 Ha. 434.

Renouncing probate.

Effect of delay.

Counsel's opinion.

Disclaimer by defendant trustee.

Form of disclaimer by defence.

Evidence in support.

Where plaintiff replies.

Suit caused by refusal to act.

Effect of disclaimer.

Vests estate in other trustees.

is retro-  
spective,

And it relates back to the original appointment : *Peppercorn v. Wayman*, 5 De G. & Sm. 230.

enables  
power to be  
exercised  
by other  
trustees.

Where two or more persons are appointed trustees by name, or merely as "trustees," and any of them disclaim, powers of sale, of consent to marriage, &c., may be exercised by those who do not : *Hawkins v. Kemp*, 3 East, 410, 437 ; *Earl Granville v. McNeile*, 7 Ha. 156 ; *Adams v. Taunton*, 5 Mad. 435 ; *Cooke v. Crawford*, 13 Sim. 96 ; *Clarke v. Parker*, 19 Ves. 1, 15 ; *Boyce v. Corbally*, Ll. & G. t. Plunk. 102 ; *Worthington v. Evans*, 1 S. & S. 165 ; *White v. McDermott*, 1 R. 7 C. L. 1.

Where all  
disclaim.

If all the executors and trustees renounce, a discretionary power of sale for the purpose of distributing the personalty may be exercised by the administrator *cum test. annexo*, though the debts have been long since paid and he has assented to the bequests in the will : *Wyman v. Carter*, 12 Eq. 309.

Legal  
estate.

The legal estate in freeholds vests in the settlor's heir : *Roberts v. Gordon*, 6 Ch. D. 535.

Executor of  
executor.

The executor of an executor cannot refuse to act in the administration of the estate of which the latter was executor : *Brooke v. Haymes*, 6 Eq. 25 ; see 1 Wms. Exors., 6th ed. 265.

Covenant  
not en-  
forceable  
by acting  
trustees  
only.

Trustees under a covenant cannot sue upon the covenant during the life of one of them who has disclaimed : *Wetherell v. Langston*, 1 Exch. 634.

## II.—Of Acceptance.

*Primâ facie* a man is presumed to assent to a devise or grant to him, and upon a similar principle a trustee is deemed to have accepted the trust until the contrary is proved : *Townson v. Tickell*, 3 B. & A. 31.

By signing  
the trust  
deed.

Acceptance is shown by signature of the trust deed : *Montford v. Cadogan*, 19 Ves. 637.

Proof of  
execution.

Proof of actual execution *coram testibus* is not necessary : *Buckeridge v. Glasse*, Cr. & Ph. 131.

An executor upon trust accepts the trust by proving the will: *Mucklow v. Fuller*, Jac. 198; *Booth v. Booth*, 1 Bea. 125; and see *Williams v. Nixon*, 2 Bea. 472; *Styles v. Guy*, 1 Macn. & G. 431. And the rule is the same where the trusts refer to real estate: *Ward v. Butler*, 2 Moll. 533.

By proving will.

An executor of an executor cannot accept the administration of his own testator's assets without assuming that of the original testator's assets: *Brooke v. Haymes*, 6 Eq. 25; *Williams' Executors*, 276.

Acceptance by executor of executor;

And a trustee under two trusts in the same settlement cannot accept one and repudiate the other: *Urch v. Walker*, 3 M. & Cr. 702; but see *Wellesley v. Withers*, 4 E. & B. 750. Probably the devisee of all the trust estates of a trustee of two distinct settlements can accept one set of trusts and disclaim the other: *Lewin*, 181.

by trustee under two trusts.

An executor proved to have assented to a legacy to be held on trust becomes an express trustee: *Dix v. Burford*, 19 Bea. 409; especially after the appropriation of the legacy: *Byrchall v. Bradford*, 6 Madd. 240; *Phillipo v. Munnings*, 2 M. & Cr. 309; *Exp. Dover*, 5 Sim. 500.

By assent to a trust legacy.

Although a trustee have not executed the deed, if he have had notice of the trust, and has not objected at the time, he will not be allowed at a subsequent time to say that he never assented to the conveyance: *Wise v. Wise*, 2 J. & L. 403, 412.

Presumptive acceptance through notice.

A settlor may expressly provide that the deed shall be void unless all the trustees execute; otherwise the property will pass to those who assent: *Small v. Marwood*, 9 B. & C. 307.

Provision as to non-execution.

Acceptance may be presumed from mere lapse of time without any act of disclaimer: *Re Uniacke*, 1 J. & L. 1; *Re Needham*, *ibid.* 34; *Doe v. Harris*, 16 M. & W. 522; but see *Noble v. Meymott*, 14 Bea. 471.

Acquiescence.

Parol evidence is admissible as to the acceptance or non-acceptance of the trust: *James v. Frearson*, 1 Y. & C. C. C. 370.

Parol proof of acceptance.

Acceptance may be proved by acts which can be referred to the character of trustee only: *e. g.* an executor

Acceptance by conduct.

trustee making payments and paying debts (*White v. Barton*, 18 Bea. 192), bringing an action (*Montford v. Cadogan*, 17 Ves. 489), and generally interfering in any way with the trust estate: *Doyle v. Blake*, 2 Sch. & L. 231; *Harrison v. Graham*, 1 P. W. 241, n.; *Urch v. Walker*, 3 M. & C. 702; and see *Lowry v. Fulton*, 9 Sim. 115.

Acting as agent is not acceptance,

But if he acts merely as agent for the trustees, himself not having proved the will or acted as trustee, no acceptance will be presumed: *Lowry v. Fulton*, *supra*; *Stacey v. Elph*, 1 M. & K. 198.

nor having trust deed for safe custody.

A person named a trustee, but who does not execute the deed, is not taken to have accepted the trust merely because the deed has been delivered to him for safe custody: *Evans v. John*, 4 Bea. 36.

How trustees bound by recitals in trust deed.

As to how far a trustee will be bound by recitals in the trust deed: *Fenwick v. Greenwell*, 10 Bea. 412; *Gore v. Bowser*, 3 Sm. & G. 6; *Westmoreland v. Holland*, W. N. 1871, 130; *Brooke v. Haymes*, 6 Eq. 25.

Acceptance by trustees de facto, de leur tort, or imperfectly appointed, may be an express trustee.

An imperfectly appointed trustee accepting the trust is held to be a trustee *de facto* or *de son tort*: *Pearce v. Pearce*, 22 Bea. 248; *Hennessy v. Bray*, 33 Bea. 102; or even in the case of a general devisee of real estate not subject to a legacy, so that trust estates do not pass (see p. 21, *post*), the devisee, if he act in the execution of the trusts, becomes an express trustee: *Rackham v. Siddall*, 1 Macn. & G. 607; *Life Association of Scotland v. Siddal*, 3 D. F. & J. 58.

General effect of acceptance.

The effect of acceptance, however evidenced, is to make the trustee subject to all the consequences and duties connected with that office: *Montford v. Cadogan*, 19 Ves. 637.

Debt created by breach of trust where trustees accept by executing deed.

Since the 32 & 33 Vict. c. 46, it has become unimportant to distinguish between the cases in which a deceased trustee liable for breach of trust has executed or not a deed or covenant which would constitute a specialty debt, and not a simple contract debt. [For the former law upon this point, see *Lewin*, 182—184.]

## CHAPTER III.

### OF THE DUTY OF TRUSTEES TO ACT JOINTLY.

TRUSTEES must in general act, or will be taken to have acted, jointly in all matters connected with the trust : *Lee v. Sankey*, 15 Eq. 204 ; *Messeena v. Carr*, 9 Eq. 260. Trustees must act jointly ;

All the trustees must therefore join—

In receiving and giving receipts for the trust fund : *Lee v. Sankey*, 15 Eq. 204. in receiving money,

In advancing money on securities : *Swale v. Swale*, 22 Bea. 584. advancing money,

In receiving the proceeds of a sale : *Oliver v. Court*, 8 Price, 166. proceeds of sale,

In proving debts in bankruptcy : *Exp. Phillips*, 2 Deac. 334 ; but see *Exp. Smith*, 1 Deac. 385, *infra*. proving debts,

In the case of charitable trusts the majority of the trustees can bind the minority : *Wilkinson v. Malin*, 2 Tyr. 544 ; *Ward v. Hipwell*, 3 Giff. 547 ; *Perry v. Shipway*, 1 Giff. 1 ; *Re Congregational Church*, W. N., 1866, p. 196 ; and see 32 & 33 Vict. c. 110, s. 12. charity trustees.

Dividends and rents are receivable by one trustee. But his co-trustees will be liable in case of a misappropriation : *Gough v. Smith*, W. N., 1872, pp. 18, 66. Who may receive rent and dividends.

The Court has in some cases ordered dividends of stock to be paid to one of several trustees : *Re Clinton*, 8 W. R. 492 ; *Re Coulson*, W. N., 1867, p. 233 ; *Re Pryor*, *ibid*. 1876, p. 141. Practice of the Court

As to ordering payment to "the trustees for the time being," see 1 Seton, Dec. p. 88.

in charity  
trusts.

In the case of charities the Court orders payment of dividends to all or any two: *A.-G. v. Brickdale*, 8 Bea. 223; *Exp. Shrewsbury Hospital*, 9 Ha. App. xlv.

Some prov-  
ing in  
bank-  
ruptcy.

In special cases less than all the trustees may, it seems, prove debts in bankruptcy: *Exp. Smith*, 1 Deac. 385.

But the *cestui que trust* should join in the proof: see *Exp. Gray*, 4 D. & C. 778, 2 M. & A. 283; *Exp. Dubois*, 1 Cox, 310; *Exp. Battier*, Buck, 426.

Should not  
sever de-  
fence:  
costs in  
such case.

Trustees should not sever in defending actions to which they are defendants, except under special circumstances; and if they do, one set of costs only will be allowed, the appointment being left to the Taxing Master: *Gaunt v. Taylor*, 2 Bea. 346; *Course v. Humphrey*, 26 Bea. 402; *Prince v. Hine*, 27 Bea. 345; *A.-G. v. Wyville*, 28 Bea. 464.

To whom  
costs pay-  
able.  
When they  
may sever.

If there is a case for severance, the whole costs are paid to the innocent trustee: *Webb v. Webb*, 16 Sim. 55.

The following have been held to be special circumstances justifying a severance:

Non-acquiescence in a breach of trust: *Webb v. Webb*, *supra*.

Where trustees live far from one another so that they cannot confer as to their defence: *Wiles v. Cooper*, 9 Bea. 294, and cases cited in note, p. 299.

And generally on this point, see *Gaunt v. Taylor*, *sup.*; *Anon.*, 1 Y. & C. C. C. 538.

## CHAPTER IV.

### OF THE DUTY OF TRUSTEES TO ACT PERSONALLY.

TRUSTEES cannot delegate their trust ; and though they leave the trust to be performed by another, they still remain liable for his default to their *cestui que trust* : *Trustee cannot delegate the trust.*  
*Adams v. Clifton*, 1 Russ. 297 ; *Clough v. Bond*, 3 M. & Cr. 490 ; *Ingle v. Partridge*, 34 Bea. 411 ; *Bostock v. Floyer*, 1 Eq. 26.

A trustee who hands money, for investment or otherwise, to his co-trustee, who misapplies it, is liable : *Trutch v. Lamprell*, 20 Bea. 116. *Delegation to co-trustee ;*

So if he gives a power of attorney to his co-trustee to sell out stock, and the latter appropriates it : *Chambers v. Minchin*, 7 Ves. 185. *by giving him sole right to receive,*

No arrangement between co-trustees that one shall act will absolve the other from liability : *Exp. Booth*, Mont. 248. *or by arrangement.*

Bankruptcy trustees must not delegate the trust : *Douglas v. Browne*, Mont. 93 ; *Exp. Townsend*, 1 Moll. 139. *Bankruptcy trustees.*

If a cheque be sent in the ordinary course to a co-trustee, who cashes it and steals the money, his co-trustees are not liable, if his credit was unimpeached at the time : *Wackerbarth v. Powell*, Buck, 495 ; *Exp. Griffin*, 2 Gl. & J. 114. *Act done in ordinary course.*

Nor are they liable if the cheque be crossed and he erase the crossing : *Barnard v. Bagshaw*, 3 D. J. & S. 355 ; and see *Bostock v. Floyer*, 1 Eq. 26. *Fraud of co-trustee.*

Money should not be given to a co-executor without some proof of the purpose for which it is required ; for all will be liable for what is not used for such ascer- *Unnecessary payments to co-trustees.*

tained purpose: *Shipbrook v. Hinchinbrook*, 11 Ves. 252; *Underwood v. Stevens*, 1 Mer. 714; *Williams v. Nixon*, 2 Bea. 472.

Evidence of necessity and ignorance of fraudulent intent.

It follows that as executors in trust are each entitled to receive assets, the one who does not is liable only for misapplication if he knew of the fraud and acquiesced in it; not if he were innocently ignorant of it: *Williams v. Nixon*, *supra*; *Booth v. Booth*, 1 Bea. 125; and see further as to the liability of executors: *Sadler v. Hobbs*, 2 B. C. C. 114; *Scurfield v. Howes*, 3 B. C. C. 91; *Chambers v. Minchin*, 7 Ves. 185; *Joy v. Campbell*, 1 Sch. & L. 341; *Davis v. Spurling*, 1 R. & M. 66.

Accountability of trustees who employ agent.

The absence abroad of an authorised agent of the trustees does not excuse them from accounting, unless they can show that the possession of the vouchers by the agent was not by their wilful neglect or default: *Turner v. Corney*, 5 Bea. 515.

Delegation to devisee or stranger.

Trustees renouncing, and conveying to a devisee or stranger who does not perform the trusts, remain liable: *Hardwick v. Mynd*, 1 Anst. 110; and see *Burt v. Dennet*, 2 B. C. C. 225; *Bradwell v. Catchpole*, 3 Swans. 78, n.; *Doyle v. Blake*, 2 Sch. & L. 239.

Delegation to solicitor.

Trustees should not commit to their solicitor the duty of receiving trust-money, for he cannot give a valid receipt for it: *Anon.* 12 Mod. 560; *Ghost v. Waller*, 9 Bea. 497.

Receipts of solicitor for purchase-money.

And on a sale of trust property, a solicitor cannot give a receipt for the purchase-money without the written authority of the trustees: *Viney v. Chaplin*, 2 D. & J. 468, 482; *Robertson v. Armstrong*, 28 Bea. 123. And after signing the receipt and executing the conveyance the trustees should receive the money themselves: *Ghost v. Waller*, 9 Bea. 497.

Solicitor banking trust-money.

If the solicitor be allowed out of the ordinary course to pay trust-money to his own account at his bankers, the trustees remain liable: *Macdonnell v. Harding*, 7 Sim. 178.

When money may be left with solicitor.

But money received in the ordinary course of business may be left with the solicitor; but not before it is actually required: *Castle v. Warland*, 32 Bea. 660.



And though the solicitor have been chosen with ordinary care, and be of good repute at the time, trustees are liable for his misapplication : *Bostock v. Floyer*, 1 Eq. 26. Fraudulent solicitor.

Though the solicitor be one of the trustees : *Re Fryer*, 3 K. & J. 317 ; *Coomer v. Bromley*, 5 De G. & Sm. 532. Where solicitor is co-trustee.

And the delegation to a solicitor by one of the trustees renders the others liable if they knew of it and acquiesced : *Griffiths v. Porter*, 25 Bea. 236 ; *Wood v. Weightman*, 13 Eq. 434. Delegation to solicitor by one of several trustees.

Where the solicitor was trusted by the testator and of good repute, trustees were held not to be liable for committing to him money for the purpose of settling debts : *Re Bird*, 16 Eq. 203 ; and see *Kilbee v. Sneyd*, 2 Moll. 199 ; *Bacon v. Bacon*, 5 Ves. 331 ; and *Churchill v. Hobson*, 1 P. W. 241 ; *Harrison v. Graham*, 3 Hill's MSS. 239. Solicitor compounding debts.

Solicitors are liable if they take the receipt of only one of the co-trustees : *Lee v. Sankey*, 15 Eq. 204 ; and see *A.-G. v. Corp. Leicester*, 7 Bea. 176 ; *Hardy v. Caley*, 33 Bea. 365 ; *Charlton v. Durham*, 4 Ch. 433. Receipt of one co-trustee to solicitor.

But *cestuis que trust* cannot make the solicitor liable without joining the trustees as defendants, where the latter have committed a breach of trust by authorizing the solicitor to receive the money : *Robertson v. Armstrong*, 28 Bea. 123. Trustees to be joined in action against solicitor.

In all these cases the payment of money to solicitors or agents is excused where it is from necessity, which includes the ordinary course of business : *Clough v. Bond*, 3 M. & Cr. 490. Payments in ordinary course.

This may be the case where the payment is to a co-trustee acting as agent for the rest : see *Langford v. Gascoyne*, 11 Ves. 333 ; *Shipbrook v. Hinchinbrook*, 11 Ves. 252 ; 16 Ves. 477 ; *Underwood v. Stevens*, 1 Mer. 712 ; *Hanbury v. Kirkland*, 3 Sim. 265 ; Or to co-trustees.

If the payment was made simply to the co-trustee as agent and he acted in that character only : *Davis v. Spurling*, 1 R. & M. 64. Payment to co-trustee as agent.

Thus a trustee is not liable because an agent pays Liability

for acts of agents. money received pending the appointment of a new trustee into a bank which fails: *Adams v. Claxton*, 4 Ves. 226.

Taking security from agent. And the trustee is not required to take security from the agent before employing him in the ordinary course of business: *Exp. Belchier*, Amb. 220.

Delegation of discretionary power. If the trust be discretionary, the delegation of it gives no power to the deputy, grantee, or devisee, or even to a co-trustee to exercise it: *Alexander v. Alexander*, Tudor, R. P. C. p. 330; *A.-G. v. Scott*, 1 Ves. Sen. 413; *Crewe v. Dicken*, 4 Ves. 97; *Re Burtt*, 1 Dr. 319; *Cole v. Wade*, 16 Ves. 47; *Kingham v. Lee*, 15 Sim. 400.

## CHAPTER V.

### OF THE DEVISE OF THE LEGAL ESTATE IN TRUST AND MORTGAGE ESTATES.

IN the absence of an express devise of trust and mortgage estates, such estates, as also the constructive trust in a vendor after a valid contract for sale, will pass under a general devise unless a contrary intention appear by the will: *Braybroke v. Inskip*, 8 Ves. 417, 436; *Lysaght v. Edwards*, 2 Ch. D. 499. The reasoning is the same in the case of a mortgage estate as of a trust estate: *Re Bellis*, 5 Ch. D. 509.

What will prevent the estate from passing :—

A charge of debts, or of debts and legacies, or of legacies only, will prevent a bare trust estate from passing under a general devise: *Roe v. Reade*, 8 T. R. 118; *Re Packman v. Moss*, 1 Ch. D. 214; *Re Bellis*, 5 Ch. D. 510; *Re Horsfall*, M'Cl. & Y. 292; *Doe v. Lightfoot*, 8 M. & W. 553; *Re Smith*, 4 Ch. D. 70; but see *Re Stevens Will*, 6 Eq. 597; *Re Brown and Sibly*, 3 Ch. D. 156.

Even if the real estate is subject to a single legacy: *Hope v. Liddell*, 21 Bea. 183.

A trust for sale shews an intention that they shall not pass: *Re Cantley*, 17 Jur. 124.

Or, a devise to uses in strict settlement, or executory devises: *Thompson v. Grant*, 4 Madd. 438; *Braybroke v. Inskip*, *supra*, at p. 434.

Or, upon charitable trusts: *A.-G. v. Vigor*, 8 Ves. 276.

Where they do not pass.

Charge of debts and legacies.

Single legacy.

Trust for sale.

Strict settlement.

Charity.

Tenancy in common with accruer. Or, if the devise be to tenants in common with accruer upon death under age: *Thirtle v. Vaughan*, 24 L. T. 5; *Martin v. Laverton*, 9 L. R. Eq. 563.

Unascertained class. Or, if the devise be to an unascertained class as tenants in common: *Re Finney*, 3 Giff. 465.

Tenacy in common. Or, to tenants in common at all: *Re Vallis*, Rolls, 22 July, 1807.

Separate use. Or, *semble*, where the devise is to a female to her separate use: *Lindsell v. Thacker*, 12 Sim. 178; see however *Lewis v. Mathews*, 2 Eq. 177.

Where they pass. But no contrary intention is inferred:—

“To the use and behoof.” From the addition to the general devise of the words “to the use and behoof”: *Exp. Brettell*, 6 Ves. 577 (as explained by Lord Eldon in *Braybroke v. Inskip*, *supra*).

“Own use and benefit.” Or, “for his own use and benefit:” *Bainbridge v. Ashburton*, 2 Y. & C. Ex. 347; *Sharpe v. Sharpe*, 12 Jur. 598.

“Absolute benefit.” Or, for his “own absolute use and benefit:” *Exp. Shaw*, 8 Sim. 159.

“Sole” use of female. Or, for the “sole and absolute use and benefit” of a female—“sole” not being held to create a separate use: *Lewis v. Mathews*, 2 Eq. 177.

“Securities for money.” Mortgage estates will pass notwithstanding a charge of debts and legacies if the testator have used words shewing an intention to pass them, as “securities for money:” *Re King*, 5 De G. & Sm. 647; *Knight v. Robinson*, 2 K. & J. 503; *Rippen v. Priest*, 13 C. B. N. S. 308. [*Galliers v. Moss*, 9 B. & C. 267, *Silvester v. Jarman*, 10 Price, 78, and *Re Cantley*, 17 Jur. 124 (on this point), are overruled; see *Knight v. Robinson*, 2 K. & J. 505.] Or “moneys upon mortgage”: *Doe v. Bennett*, 6 Exch. 892; *Re Arrowsmith*, 4 Jur. N. S. 1123.

But a devise including “securities for money” will not pass an estate contracted to be sold: *Goold v. Teague*, 5 Jur. N. S. 116.

Lands contracted to be sold. The legal estate in property bound by a valid contract for sale passes under a general devise of real and personal

estate upon trust for sale and conversion : *Wall v. Bright*, 1 J. & W. 494. [And see *Lysaght v. Edwards*, 2 Ch. D. 499, in which the reasoning in *Wall v. Bright* is commented on.]

*Of the Execution of the Trust by a Devisee of the Trust Estate.*

Trusts created by a gift to trustees and the survivor of them, and the heirs, executors, administrators, and "assigns" of such survivor, may be effectually executed by a devisee of trust estates under the will of such survivor : *Titley v. Wolstenholme*, 7 Bea. 425 ; *Hall v. May*, 3 K. & J. 585 ; but see *Ashton v. Wood*, 3 Sm. & G. 436.

Trusts limited to "assigns" may be executed by survivor.

The intention of the settlor is in these cases held to be sufficiently indicated, that the personal confidence reposed in the trustees shall not be limited to the individuals he has originally selected, by the employment of the word "assigns : " *Titley v. Wolstenholme*, *supra*.

Reasons of the rule.

A power to appoint new trustees in the original settlement does not prevent the application of the rule : *Hall v. May*, *supra*.

Effect of power to appoint new trustees. *Ockleston v. Heap*.

[*Ockleston v. Heap*, 1 De G. & Sm. 640, is *contra*, but V.-C. K. Bruce gave no reasons for his decision.]

Trusts created by a gift to trustees, and the survivor of them, and the heirs, executors, and administrators (*omitting* "assigns") of such survivor cannot be passed by the survivor to a devisee of his trust estates : *Cooke v. Crawford*, 13 Sim. 91 ; *Wilson v. Bennett*, 20 L. J. Ch. 279.

Where "assigns" omitted the trusts cannot be exercised by the devisee.

In this case (the principle of which several judges have said ought not to be extended), it seems to have been decided that the effect of the devise was to prevent the trustee's heir from executing the trusts, because the legal estate had passed to the devisee, and to prevent the devisee, on the ground that he was not originally in-

Reason of the rule.

tended to act as a trustee : *Cooke v. Crawford, supra*, at p. 98.

Power of sale for trustees, their heirs, executors, or administrators.

Thus, a power of sale given to trustees, and the survivor or survivors of them, his heirs, executors, or administrators, cannot be validly exercised by the devisee of the survivor, although he is his heir-at-law : *Macdonald v. Walker*, 14 Bea. 556.

Trusts of leaseholds to trustees, their executors and administrators.

Trusts of leaseholds given to trustees, their executors, and administrators, cannot be exercised by a person to whom the trustee bequeaths his trust estates, although such person, with another executor, be also appointed executor : *Re Burt*, 1 Drew, 319.

Simple appointment of "trustees and executors."

The survivor of two persons appointed trustees and executors without a limitation of any estate to them, cannot effectually devise the trust : *Mortimer v. Ireland*, 11 Jur. 721 ; 16 L. J. Ch. 416.

Devise not breach of trust.

A devise of trust estates is not a breach of trust on the part of the deviser ; though if the heir of the deviser is a proper person to perform the trust, and not under disability, such a devise is not advisable : *Titley v. Wolstenholme*, 7 Bea. 425 ; but see *Cooke v. Crawford*, 13 Sim. 98.

## CHAPTER VI.

### OF THE STATUTE OF FRAUDS AS IT AFFECTS TRUSTS.

“All declarations or creations of trusts or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by writing, signed by the party who is by law entitled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect”: 29 Car. 2, c. 3, s. 7.

Trusts of personal estate are not within the section, and may be declared or created by parol: *Fordyce v. Willis*, 3 B. C. C. 587; *McFadden v. Jenkyns*, 1 Hare, 461; *Peckham v. Taylor*, 31 Bea. 250. Trusts of personalty not within Act.

As the Statute requires the trust to be only manifested and proved by writing, any signed document clearly containing the terms of the trust will be sufficient to satisfy the Statute, though such document be not contemporaneous with the actual creation or declaration of trust: *Forster v. Hale*, 3 Ves. 696; 5 Ves. 315; *Nab v. Nab*, 10 Mod. 404; *Moorecroft v. Dowding*, 2 P. W. 314; *Barkworth v. Young*, 4 Dr. 1; *Smith v. Matthews*, 3 D. F. & J. 139. Proof of the trust by writing.

The trust when formulated in writing must be clear and definite, not only as to the property to be affected by it, but as to the persons to be benefited: *Forster v. Hale*, *supra*; *Freeman v. Tatham*, 5 Ha. 329. Trust must be completely declared.

The *cestui que trust* is the person by law entitled to declare the trust: *Tierney v. Wood*, 19 Bea. 330; *Kronheim v. Johnson*, 7 Ch. D. 60. Person entitled to declare trust.

Copyholds are within the section: *Withers v. Withers*, Amb. 151; *Acherley v. Acherley*, 7 B. P. C. 273. Copyholds.

- Leaseholds. So also are leaseholds : *Forster v. Hale*, 3 Ves. 696.
- Crown. The Crown is not bound by it: *Adlington v. Cann*, 3 Atk. 146.
- Charitable trusts. Charitable trusts are within the section : *Adlington v. Cann, supra* ; *Loyd v. Spillet*, 3 P. W. 344.
- Signature of connected document. The signature to the required writing may be either of the declaration itself, or of some note in writing forming part of the same transaction: *Forster v. Hale, supra* ; *Kronheim v. Johnson*, 7 Ch. D. 60 ; and see *Caton v. Caton*, L. R. 2 H. L. 127.
- Pleading statute against unlawful trust. If a defendant wishes to establish a conveyance to him upon an illegal or immoral consideration, he cannot claim the benefit of the Statute of Frauds to meet the plaintiff's case that the conveyance was made upon a trust for him : *Haigh v. Kaye*, 7 Ch. 469 ; following *Childers v. Childers*, 1 D. & J. 482 ; *Lincoln v. Wright*, 4 D. & J. 16 ; *Davies v. Otty*, 35 Bea. 208 ; and see *Secret Trusts, post*, p. 79.
- Statute must be pleaded ; not relied on by demurrer. The Statute of Frauds must now be pleaded under Order XIX. r. 23. It cannot be raised by demurrer : *Clarke v. Callow*, 46 L. J. Q. B. 53 ; *Catling v. King*, 5 Ch. D. 660 ; *Morgan v. Worthington*, 38 L. T. N. S. 443.



## CHAPTER VII.

### OF VOLUNTARY TRUSTS BY TRANSFER OR DECLARATION.

IN order to make a voluntary settlement valid and effectual the settlor must have done everything, which according to the nature of the property, was necessary to be done in order to transfer the property and render the settlement binding upon him. He may do this by actually transferring the property to the persons for whom he intends to provide, and the provision will then be effectual or it will be equally effectual if he transfers the property to a trustee for the purposes of the settlement, or declares that he holds it in trust for those purposes; and if the property be personal, the trust may be declared either in writing or by parol (see *ante*, p. 25); but in order to render the settlement binding, one or other of the above modes must be resorted to; for there is no equity to perfect an imperfect gift: *Milroy v. Lord*, 4 D. F. & J. 274; *Warriner v. Rogers*, 16 Eq. 340; *Richards v. Delbridge*, 18 Eq. 11; *Heartley v. Nicholson*, 19 Eq. 233; and see note to *Ellison v. Ellison*, 1 W. & T. L. C. Eq. 282, *et seq.* *Richardson v. Richardson*, 3 Eq. 686, and *Morgan v. Malleon*, 10 Eq. 475, are disapproved in the above cases.

Modes of creating perfect voluntary trusts.

If the settlement is intended to be effectuated by one of the modes above referred to, the Court will not give effect to it by applying another of those modes. If it is intended to take effect by transfer, the Court will not hold the intended transfer to operate as a declaration of trust, "for then every imperfect instrument would be made effectual by being converted into a perfect trust":

Imperfect voluntary settlement not construed as declaration of trust.

*Milroy v. Lord*, *supra*; followed in *Warriner v. Rogers*, *Richards v. Delbridge*, and *Heartley v. Nicholson*, *supra*.

Mode of  
making  
complete  
legal trans-  
fer.

In accordance with the doctrines stated above it is necessary in each case to consider by what means a complete legal transfer may be made, as to which see *Parnell v. Hingston*, 3 Sm. & G. 347; and May on Fraudulent Conveyances, p. 380, *et seq.*; Byles on Bills, 5th ed. 1603; and see *Wheatley v. Purrr*, 1 Keen, 551; *Stapleton v. Stapleton*, 14 Sim. 186; *Moore v. Darton*, 4 De G. & Sm. 517; *Gee v. Liddell*, 35 Bea. 621, in which voluntary trusts were under the circumstances considered, by the completeness of the transactions, to have been established.

Voluntary  
settlement  
of equit-  
able estate.

It is now decided that a voluntary settlement of the equitable estate is effectual as giving a right to the assignee to enforce it by obtaining the legal estate from the original trustees: *Kekewich v. Manning*, 1 D. M. & G. 187; *Sloane v. Cadogan*, Sugd. V. & P. App. 26, 9th ed.; *Gilbert v. Overton*, 2 H. & M. 110; *Tierney v. Wood*, 19 Bea. 330; *Kronheim v. Johnson*, 7 C. D. 60.

Trust of  
equitable  
reversion.

A trust may be declared of an equitable reversionary interest: *Sloane v. Cadogan*, Sugd. V. & P. App. 26, 9th ed.

Of interest  
under  
agreement  
for lease.

Or of the lessee's interest under an agreement for a lease to be granted under a building agreement, though he may not be entitled to a lease at the date of the settlement: *Gilbert v. Overton*, 2 H. & M. 110.

Notice.

The title of the volunteers is complete without notice: *Fortescue v. Barnett*, 3 M. & K. 36; *Pearson v. Amicable Assurance Off.*, 27 Bea. 229; *Justice v. Wynne*, 12 Ir. Ch. R. 299.

Communi-  
cation to  
*cestui que*  
*trust*.

It is not necessary to the binding effect of the trust that it should be communicated to or accepted by the volunteer: *Re Way*, 2 D. J. & Sm. 365; see *Lambe v. Orton*, 1 Dr. & Sm. 125; *Tate v. Leithead*, Kay, 658.

Acceptance  
by original  
trustees of  
new trust.

If the owner of the equitable estate directs his trustees to hold for others than himself, and the trustees accept such new trusts, and act upon them, the volunteers' title

is good : *Rycroft v. Christy*, 3 Bea. 238 ; *McFadden v. Jenkyns*, 1 Ha. 458, 1 Ph. 153.

The following are instances in which the assignment was held to be imperfect and no declaration of trust, on the grounds above stated, inferred by the Court :—

Examples of ineffectual voluntary trusts :

An owner of shares endorsed on the certificates the words "I hereby assign, &c.," to others, but no transfer was executed, and he was held to have a *locus penitentie* so long as the gift was thus incomplete : *Antrobus v. Smith*, 12 Ves. 39.

Indorsement but no transfer.

So also a deed assigning shares and not complying with the requirements for their transfer was inoperative : *Dillon v. Coppin*, 4 M. & Cr. 647 ; *Searle v. Law*, 15 Sim. 95 ; *Milroy v. Lord*, 4 D. F. & J. 264 ; *Moore v. Moore*, 18 Eq. 474.

Imperfect statutory transfer.

A power of attorney given to the trustee to transfer does not help the case unless he acts upon it by transferring to himself : *Milroy v. Lord*, *supra*.

Power of attorney.

The indorsement of an unsealed assignment on a bond is ineffectual to pass it as a voluntary gift : *Edwards v. Jones*, 1 M. & Cr. 226.

Bond assigned by indorsement.

So an indorsement on a lease of the words, "This deed and all thereto belonging I give, &c.," and signed, was held not to pass the leasehold and stock-in-trade, as the intending donor had not absolutely parted with his interest or effectually changed his right and put the property out of his power : *Richards v. Delbridge*, 18 Eq. 11.

Indorsement of lease.

Where a cheque was given to one in trust for another, with a verbal direction that the amount was to be in trust instead of a legacy given by will to the proposed *cestui que trust*, the declaration was held to be inoperative : *Hughes v. Stubbs*, 1 Hare, 476.

Cheque.

Similarly where the cheque was given by the owner to his young child with a declaration before witnesses, but was afterwards retained by the owner till his death : *Jones v. Lock*, 1 Ch. 25.

- Title deeds. Where a paper was put into a box containing title deeds, the key being retained by the owner, the property affected to be passed by the document was held not to be impressed with any sufficient trust : *Warriner v. Rogers*, 16 Eq. 353.
- Deed-poll instead of conveyance. A deed poll professing to be a complete gift of land by a husband to his wife and not a declaration of trust, is not supported as a declaration of trust : *Price v. Price*, 14 Bea. 598.
- Interest in mortgage. The interest under a mortgage deed cannot be transferred by the mortgagee to a volunteer without a transfer of the mortgaged property : *Woodford v. Charnley*, 28 Bea. 96.
- Trusts are not finally declared. So long as the trusts are not specifically and finally indicated, though a legal conveyance or assignment may have been executed, the gift is revocable : *Re Sykes*, 2 J. & H. 415.
- Voluntary promise. A volunteer has no equity to enforce a mere voluntary promise to assign against the assets of the person who made the promise : *Marler v. Tommas*, 17 Eq. 8, 13.
- Voluntary covenant to transfer stock or shares. A voluntary covenant to transfer stock is a mere imperfect gift which equity will not assist : *Ellison v. Ellison*, 6 Ves. 656, 662 ; *Ward v. Audland*, 8 Sim. 571, 576. So is a voluntary covenant to transfer shares : *Dillon v. Coppin*, 4 M. & Cr. 647, 671 ; and see *Exp. Pye*, *Exp. Dubost*, 18 Ves. 149 ; *Payne v. Mortimer*, 4 D. & J. 447 ; *Dillwyn v. Llewelyn*, 4 D. F. & J. 517, as to *ex post facto* consideration.
- Covenant to surrender copyholds. Or a voluntary covenant to surrender copyholds not followed by a legal surrender : *Jefferys v. Jefferys*, Cr. & Ph. 138 ; *Denning v. Ware*, 22 Bea. 184 ; *Steele v. Waller*, 28 Bea. 466 ; *Tatham v. Vernon*, 29 Bea. 604 ; *Bizzey v. Flight*, 24 W. R. 957.
- Where assignor has done all he can. The assignment is upheld as a trust if the assignor has done all that has been required of him to perfect it, and thus upon a voluntary trust of a policy, the neglect of the trustees to give notice of the assignment to the office will

not affect the title of the *cestuis que trust*, though the omission might enable the settlor to deal otherwise with the policy : *Fortescue v. Barnett*, 3 M. & K. 36 ; and see *Hogarth v. Phillips*, 4 Dr. 360.

Volunteers, or their trustees for them, cannot compel the settlor to perfect an imperfect voluntary settlement : *Lee v. Henley*, 1 Vern. 37 ; *Williamson v. Codrington*, 1 Ves. Sen. 511 ; *Antrobus v. Smith*, 12 Ves. 47 ; *Fletcher v. Fletcher*, 4 Ha. 74 ; *Dening v. Ware*, 22 Bea. 190 ; *Lister v. Hodgson*, 4 Eq. 33.

No equity to compel settlor to perfect ;

Nor can they compel his representatives to give effect to it : *Antrobus v. Smith*, *supra* ; *Marler v. Tommas*, 17 Eq. 12.

or his representatives ;

Where money had been handed to another with a proved intention that it should be settled by deed, the Court finding that the deed was drawn in a form contrary to such intention, ordered the cancellation of the deed and repayment of the money in order to avoid the necessity of another action for it at Common Law : *Lister v. Hodgson*, 4 Eq. 36 ; and see *Phillipson v. Kerry*, 32 Bea. 628 ; *Manning v. Gill*, 13 Eq. 485.

Deed not executing intention.

If the deed does not carry into effect the intention of the parties it can be reformed only by consent : *Phillipson v. Kerry*, *ante* ; *Lister v. Hodgson*, *supra*.

A letter stating that property is delivered to another as a gift is of no avail if the gift is not perfected by a legal transfer of it—*e. g.*, where the property is shares standing in the alleged donor's name, and they remain in his name till his death : *Weale v. Ollive*, 17 Bea. 252 ; *Heartley v. Nicholson*, 19 Eq. 233.

Letter without transfer.

Nor will a letter, expressing approval of a proposal that the writer should give a named sum to another, amount to a declaration of trust without anything further : *Cotteen v. Missing*, 1 Mad. 176.

If the letter operates as a complete alienation, *e. g.*, as an appointment in writing under a power, it may operate as a declaration of trust : *Wilcocks v. Hannington*, 5 Ir. Ch. R. 38 ; and see *Woodroffe v. Johnston*, 4 I. Ch. R. 319.

Letter acting as appointment in writing.

As to the effect of signing such a letter in the presence of a witness, see *Re Mills*, 7 W. R. 372.

Effect of  
power of  
attorney.

Where an annuity was directed to be purchased for another, and in consequence of the intended annuitant being insane it was purchased in the name of the intending donor, who finding it so placed, gave a power of attorney to pay it over to the donee, the donor was held to be a trustee of it for the donee : *Exp. Pye*, 18 Ves. 140.

Trust for  
wife.

A husband may be a trustee for his wife in respect of a gift by him to her, though delivery is impossible, as the subject of the gift remains in his legal possession : *Grant v. Grant*, 34 Bea. 623 ; and see *Lucas v. Lucas*, 1 Atk. 271 ; *Walter v. Hodge*, 2 Sw. 104 ; *McLean v. Longlands*, 5 Ves. 78 ; *Moore v. Moore*, 18 Eq. 483 ; *Ashworth v. Outram*, 5 Ch. D. 923.

Husband  
to clearly  
become  
trustee for  
separate  
use.

But he must, by unequivocal evidence, be proved to have made the gift so as to become a trustee for the separate use of the wife : *Mews v. Mews*, 15 Bea. 533.

How trust  
arises.

Where a man entitled to a promissory note took a new one in the names of himself and wife, and directed the amount to be so transferred in the debtor's books, a perfect trust was held to have been made by him : *Gosling v. Gosling*, 3 Dr. 335.

Consent in  
Court is  
revocable.

The consent of a married woman to a transfer of a fund in Court to her husband is a mere intention to give, and not a declaration of trust, and is revocable before the transfer is completed : *Penfold v. Mould*, 4 Eq. 562.

Settlement  
by *feme*  
*sole*.

A voluntary settlement and transfer by a *feme sole* for herself till marriage (if any) with further trusts after marriage, is irrevocable, though she do not marry the then intended husband : *McDonnell v. Hesilrige*, 16 Bea. 346.

Meritorious  
considera-  
tion.

The fact of meritorious consideration will give no greater validity to a postnuptial contract : *Holloway v. Headington*, 8 Sim. 324 ; *Jefferys v. Jefferys*, Cr. & Ph. 141 ; *Price v. Price*, 14 Bea. 598. *Colman v. Sarrel*, 1 Ves. Jun. 50 ; *Ellis v. Nimmo*, Ll. & G., Sugd., 333, and other cases to the like effect, are not now considered good law.

Absence of  
considera-

Though a settlement of interests in remainder in

favour of persons not within the marriage consideration may be voluntary, it is effectual as against a subsequent settlement on the second marriage of the settlor: *Keke-wich v. Manning*, 1 D. M. & G. 176.

tion with  
reference  
to subse-  
quent  
settlement.

As to family arrangements where no apparent consideration exists, see *Miller v. Harrison*, 1 R. 5 Eq. 324, and note to *Stapilton v. Stapilton*, 2 W. & T. L. C. 836.

Family  
arrange-  
ments.

After a valid declaration of trust, the fact that the trust fund is found at the settlor's death mixed up with his own moneys does not affect the validity of the trust: *Thorpe v. Owen*, 5 Bea. 224.

Trust un-  
affected by  
mixing  
fund.

A declaration of trust of personalty may be made by parol: *McFadden v. Jenkyns*, 1 Ph. 153, and see *Exp. Pye*, 18 Ves. 140.

Parol  
trusts.

But there must be a clear declaration of intention to become an accounting party as a trustee: *Dipple v. Corles*, 11 Ha. 183.

A mere parol declaration, therefore, that the owner will distribute property among others, or a mere promise to divide the property, without declaring that he will hold in trust for them is insufficient: *ibid*.

And the Court will not act on mere loose conversations the accuracy of which cannot be distinctly proved: *Paterson v. Murphy*, 11 Ha. 92; *Peckham v. Taylor*, 31 Bea. 250.

If the settlor shews no intention of keeping a control over the settled property otherwise than as a trustee for the objects of his bounty, the trust will be effectual: *Exp. Pye*, 18 Ves. 140; *Wheatley v. Purr*, 1 Keen, 551; *Vandenberg v. Palmer*, 4 K. & J. 204; and see *Gaskell v. Gaskell*, 2 Y. & J. 502, explained in *Vandenberg v. Palmer*, *supra*; but see *Forbes v. Forbes*, 6 W. R. 92.

Retaining  
control  
over pro-  
perty sub-  
ject to  
trust.

A provision allowing the settlor to draw on funds subject to the trust, or one declaring the property to be subject to the order of his executors, was construed as being intended only as a means for making the property available for the beneficiaries: *Vandenberg v. Palmer*, *supra*.

But where no communication of the trust had been made, and there was no antecedent agreement or promise, an intention was inferred that no trust was to be created to take effect until after the settlor's death; and as he retained the dominion of the property, the trust was held to be altogether negatived: *Hughes v. Stubbs*, 1 Ha. 476; *Smith v. Warde*, 15 Sim. 56; but see *Bentley v. Mackay*, 15 Bea. 12.

Informal  
testamentary  
gift no  
trust.

If the gift is of an informal testamentary character not amounting to a *donatio mortis causâ* (as to which see *Ward v. Turner*, 1 W. & T. L. C. p. 983 *et seq.*), the Court will not give effect to it by construing it as a declaration of trust: *Warriner v. Rogers*, 16 Eq. 353; see *Re Mills*, 7 W. R. 372; *Johnson v. Ball*, 5 De G. & Sm. 85.

A mere memorandum of intention "to leave at my death" cannot be treated as a declaration of trust: *Re Glover*, 2 J. & H. 186.

Death of  
settlor  
before  
trust per-  
fected.

Even if a perfect voluntary settlement is in course of being prepared, it will be void if the settlor dies before actual completion: *Coningham v. Plunkett*, 2 Y. & C. C. C. 245; *Lambert v. Overton*, 13 W. R. 227.

Effect of  
power of  
attorney.

Where the relation of trustee and *cestui que trust* is clearly established, a power of attorney may be a sufficient declaration of the trust: *Exp. Pye*, 18 Ves. 140: *ante*, pp. 29, 32; and see *Blakely v. Brady*, 2 Dr. & Walsh, 311, 328.

Afterdeath  
of donor.

As to the effect of acting upon a power of attorney after the death of the donor, with reference to the completion of the trust, see *Kiddill v. Farnell*, 3 Sm. & G. 428; *Parnell v. Hingston*, 3 Sm. & G. 337; *Peckham v. Taylor*, 31 Bea. 251; and see 22 & 23 Vict. c. 35, s. 26.

Collateral  
security.

Handing over a promissory note with title-deeds to secure the sum is a good declaration of a trust verbally declared at the time: *Arthur v. Clarkson*, 35 Bea. 458.

Settlor  
retaining  
deed.

The retention of the deed by the settlor does not alter its binding effect: *Antrobus v. Smith*, 12 Ves. 46; *Sloane v. Cadogan*, Sugd. V. & P. App. 26, 9th ed.; *Fletcher v. Fletcher*, 4 Ha. 67; *Re Way*, 2 D. J. & Sm. 365; and see



the cases cited in *Dillon v. Coppin*, 4 M. & Cr. at p. 661.

And, if the deed comes to the hands of the settlor's executors, they may be compelled to produce it: *Fletcher v. Fletcher*, *supra*; and see *Brackenbury v. Brackenbury*, 2 J. & W. 391; *Cecil v. Butcher*, *ibid.* 565, and the cases there cited.

Production  
by exe-  
cutors.

If the deed gets back into the hands of the settlor he cannot revoke it by destroying the seals: *Smith v. Lyne*, 2 Y. & C. C. C. 345.

Destruc-  
tion of  
deed.

A subsequent will is no satisfaction of the gift under the deed: *Id.*; and see *Page v. Horne*, 11 Bea. 233.

Satisfac-  
tion by  
will.

The accidental return of the fund into the hands of the settlor does not enable him to derogate from the trust: *Browne v. Cavendish*, 1 J. & L. 637.

Return of  
fund to  
settlor's  
hands.

Where the declaration of trust has been of the equitable estate only, the subsequent getting in of the legal estate by the settlor does not avoid the trust: *Ellison v. Ellison*, 6 Ves. 656; *Gilbert v. Overton*, 2 H. & M. 117; but see *Bridge v. Bridge*, 16 Bea. 315, 327.

Settlor get-  
ting in  
legal es-  
tate.

By 13 Eliz. c. 5, settlements of realty or personalty made with an intention to defraud creditors are made void, and see the 91st s. of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71). See the cases on these Acts collected in the note to *Ellison v. Ellison*, 1 W. & T. L. C. 318, *et seq.*, and commented on in May on Fraudulent Conveyances, Pt. II., p. 17, *et seq.*; Lewin p. 67, *et seq.*

Voluntary  
convey-  
ances un-  
der 13  
Eliz. c. 5.

Under s. 1 of 27 Eliz. c. 4, fraudulent conveyances of *land* are made void as against subsequent *bonâ fide* purchasers for value.

Under 27  
Eliz. c. 4.

The absence of consideration is taken to be comprised in the term "fraudulent," though the Act does not specially refer to *voluntary* conveyances in so many words: *Doe v. Manning*, 9 East, 59; *Doe v. Rusham*, 17 Q. B. 723; *Willats v. Busby*, 5 Bea. 193.

"Fraud."

But the extent of the value given is not taken into account, and the fact that some value was given may be proved *aliunde*: *Pott v. Todhunter*, 2 Coll. 76; *Townend*

Adequate  
considera-  
tion.

*v. Toker*, 1 Ch. 446; *Bayspoole v. Collins*, 6 Ch. 228; *Price v. Jenkins*, 5 Ch. D. 619, as to consideration of leasehold covenants.

Good consideration.

Meritorious consideration does not exempt the prior voluntary deed from the operation of the Act: *Pulvertoft v. Pulvertoft*, 18 Ves. 84.

*Ex post facto* consideration.

And it seems that *ex post facto* consideration may support the deed if clearly connected with its purpose: *Guardian Assurance v. Avonmore*, 6 I. R. Eq. 391; and see *George v. Milbanke*, 9 Ves. 193.

Puisne mortgagees, lessees, judgment creditors.

Subsequent mortgagees are within the benefit of the Act: *Dolphin v. Aylward*, L. R. 4 H. L. 486.

So are lessees: *Doe v. Hopkins*, cited 9 East, 70.

But not judgment creditors: *Dolphin v. Aylward*, *supra*.

Chattels not within Act.

Chattels are not within the Act of Elizabeth: *Jones v. Croucher*, 1 S. & S. 315; *McDonnell v. Hesilrige*, 16 Bea. 346.

See further on this Act, May on Fraudulent Conveyances, Pt. III., p. 169, *et seq.*

Intended beneficiaries have no remedy against property.

The beneficiaries under a voluntary settlement have no remedy either against the estate or the purchase-money: *Williamson v. Codrington*, 1 Ves. Sen. 516; *Daking v. Whimper*, 26 Bea. 568; and see *Pulvertoft v. Pulvertoft*, 18 Ves. 91; *Townend v. Toker*, 1 Ch. 446.

Sale by heir.

The heir or devisee of the settlor cannot avoid the settlement by a sale: *Lewis v. Rees*, 3 K. & J. 132; *Doe v. Rusham*, 17 Q. B. 723.

Enforcing sale by and against settlor.

The settlement being good against the settlor until sale, he cannot enforce specific performance of a contract for sale (*Smith v. Garland*, 2 Mer. 122; *Johnson v. Legard*, T. & R. 294; *Clarke v. Willott*, L. R. 7 Exch. 313; *Rosher v. Williams*, 20 Eq. 210); except under very special circumstances, such as twenty years' undisturbed possession: *Peter v. Nicolls*, 11 Eq. 391.

But it may be enforced as against him: *Daking v. Whimper*, 26 Bea. 568; *Rosher v. Williams*, 20 Eq. 210.

## CHAPTER VIII.

### OF IRREVOCABLE AND REVOCABLE TRUSTS FOR CREDITORS.

#### I.—*Irrevocable Trusts for Creditors.*

IN order to make the trust for creditors irrevocable it is not absolutely necessary that the creditor should execute the deed; if he has assented to it or acquiesced in it or acted under its provisions, and complied with its terms, and the trustees or other creditors have expressed no dissatisfaction, he becomes a *cestui que trust* and is entitled to the benefit of the deed: *Field v. Donoughmore*, 1 Dr. & War. 227; *Biron v. Mount*, 24 Bea. 642; and see *Nicholson v. Tutin*, 2 K. & J. 18.

How creditors may get benefit of trust.

He then is entitled to all the remedies for enforcing the trust against the trustee according to the terms of the deed: *Cosser v. Radford*, 1 D. J. & Sm. 585.

Right of creditor to enforce it.

But it is not enough for him to stand by and take no part in the matter: *Biron v. Mount*, 24 Bea. 642.

Passive acceptance insufficient.

The time limited by the deed for the creditors to come in is not of the essence of the deed: *Dunch v. Kent*, 1 Vern. 260; *Spottiswoode v. Stockdale*, G. Coop. 102; *Watson v. Knight*, 19 Bea. 369; *Whitmore v. Turquand*, 3 D. F. & J. 110; *Re Baber*, 10 Eq. 554.

Time for coming in not of essence of deed.

Therefore creditors who have afterwards acceded, and have not acted in any way inconsistently with their claim to have the benefit of the deed, are entitled to that benefit: *ibid.*

Subsequent accession.

But they are excluded if they actively refuse and do not retract their refusal within the specified time: *Johnson v. Kershaw*, 1 D. G. & Sm. 260;

Active unretracted refusal.

Delay and adverse claim.

Or if they have delayed, and set up an adverse or inconsistent claim: *Watson v. Knight*, 19 Bea. 369; *Bush v. Shipman*, 14 Sim. 239; *Field v. Donoughmore*, 1 Dr. & War. 227.

Accession must be before bankruptcy.

The object of the deed being to prevent bankruptcy they cannot have the benefit of it if they have not acceded to it before the debtor's bankruptcy: *Biron v. Mount*, 24 Bea. 642.

Implied accession.

In general, no person can be considered to have impliedly acceded to the deed, who has not put himself in precisely the same situation with regard to the debtor as if he had executed it, the principle of the rule being that the creditor claiming the benefits of the deed must also bear its obligations: *Forbes v. Limond*, 4 D. M. & G. 315.

Power of trustee to enlarge time.

If the trustees have power to enlarge the time, they should do so, if necessary to permit those to execute it who from absence abroad or other cause are unable to execute it within the earlier period: *Raworth v. Parker*, 2 K. & J. 163.

Consideration of covenant not to sue.

It seems that the consideration of a covenant not to sue for a given time does not prevent non-executing creditors from coming in after the period limited by the deed: *Re Baber*, 10 Eq. 554, in which *Lane v. Husband*, 14 Sim. 656, *contra*, is disapproved.

Where trustee is a creditor.

Where the trustee under the deed is also beneficially entitled, no express assent is necessary, and the deed is irrevocable: *Siggers v. Evans*, 5 E. & B. 367; *Gurney v. Oranmore*, 5 Ir. Ch. R. 436; S. C. nom. *Montefiore v. Browne*, 7 H. L. C. 241; *Wilding v. Richards*, 1 Coll. 655; and see *Lawrence v. Campbell*, 7 W. R. 170.

Trustee has no right to retainer.

Where the trustee under a devise to pay debts is himself a creditor he has no right of retainer whether he is also executor or not: *Bain v. Sadler*, 12 Eq. 570.

Trustee solicitor to debtor and creditors.

If the deed be in consideration of antecedent specific debts and provides for their payment by a trustee who is solicitor to the creditors as well as to the debtor, the trust is still good, though the creditors do not execute: *Wilding v. Richards*, 1 Coll. 661.

A trust deed by a debtor for payment of "moneys owing by him" extends only to debts contracted at the time of making the deed; *Purefoy v. Purefoy*, 1 Vern. 28. What debts within deed.

Debts barred by time before the death of the testator are not revived by a will providing for the payment of debts generally: *Fergus v. Gore*, 1 Sch. & L. 109; *Burke v. Jones*, 2 V. & B. 275; *Hughes v. Wynne*, T. & R. 307; and see *Rendell v. Carpenter*, 2 Y. & J. 484. Debts not revived by trust for payment.

And where the trust provides for the debts of another, none that were barred at the time of such debtor's death are payable: *O'Connor v. Haslam*, 5 H. L. C. 170; and see *Joel v. Mills*, 7 Jur. N. S. 389.

Time does not run after the death: *Hargreaves v. Michell*, 6 Mad. 326; *Crallan v. Oulton*, 3 Bea. 1. Time stops at death.

A debt which at the death of the testator is not barred may afterwards become so, notwithstanding a trust, if the creditor does not pursue his remedy industriously: *Scott v. Jones*, 4 Cl. & F. 382.

A direction for payment of debts in a will of personal estate will not stop the running of time after the death, because it is the duty of executors to pay them: *Scott v. Jones*, 4 Cl. & F. 382; *Freaker v. Cranefeldt*, 3 M. & Cr. 499. Whether the same is the case where the testator charges *all* his estate both real and personal, see *Moore v. Petchell*, 22 Bea. 172, where, however, *Scott v. Jones* was not cited. Time runs where duty of executors to pay.

Specific debts barred or released at the date of the will are revived by a direction to pay them, but the creditor can only claim as a voluntary legatee where the debt has been released: *Coppin v. Coppin*, 2 P. W. 295; *Williamson v. Naylor*, 3 Y. & C. Ex. 208. Direction to pay barred debts;

Such debts, in case of the previous death of the creditors, do not lapse as legacies, but remain debts, though subject to legacy duty: *Foster v. Ley*, 2 Bing. N. C. 269; *Philips v. Philips*, 3 Hare, 281; *Re Sowerby*, 2 K. & J. 630; *Turner v. Martin*, 7 D. M. & G. 429. Nature of creditor's title in such case;

In these cases a receipt for joint debts due to partners of debts to partners;

may be given by the surviving partner: *Philips v. Philips, supra*.

unclaimed  
debt.

And if the debt be unclaimed, the fund set apart for it falls into the residue: *ibid*.

Creditors  
to prove  
before exe-  
cuting  
deed.

Trustees of creditors' deeds are empowered to require creditors to prove their debts before they execute; but having once allowed the creditor to execute for a certain sum, they cannot afterwards contest the debt, except in an action to cancel or rectify the execution of the deed on the ground of deceit, fraud, or the like: *Lancaster v. Elce*, 31 Bea. 325.

After  
adminis-  
tration by  
Court.

After an administration by the Court, trustees to pay debts may not repossess themselves of the estate to provide for a further claim, however liable the legatees may be to pay it: *Underwood v. Hatton*, 5 Bea. 36.

Power of  
selection.

But the Court will not control the exercise of a power of selection given to the trustees: *Wain v. Eymont*, 2 M. & K. 445; *Drever v. Mawdesley*, 16 Sim. 511.

Secret  
preference.

As to giving a secret preference to one creditor over others, see *Mare v. Sandford*, 1 Giff. 288; *McKewan v. Sanderson*, 15 Eq. 229; 20 Eq. 65.

Creditor's  
deed made  
with notice  
of pro-  
ceedings.  
Secured  
creditors.

It is not an objection to the irrevocability of the deed that it is executed just before proceedings taken by one of the creditors: *Mackinnon v. Stewart*, 1 Sim. N. S. 76.

In the absence of a provision to the contrary, a secured creditor, unless he gives up his security, must have it valued or realised, and can only prove for the deficiency in accordance with the rules of bankruptcy: Judicature Act, 1875, s. 10.

New trus-  
tees.

The Court has jurisdiction under s. 32 of the Trustee Act, 1850, to appoint new trustees of a creditor's deed: *Re Price*, 6 Eq. 460; *Re Raphael*, 9 Eq. 233; *Re Donisthorpe*, 10 Ch. 55.

## II.—Revocable Trusts for Creditors.

An assign-  
ment  
uncommu-  
nicated and

An assignment to trustees for creditors uncommunicated to them, and unexecuted by them, though they be made

parties to the deed, no action having been taken in the performance of the trust, is a revocable instrument construed as being purely voluntary or for the greater convenience of the settlor himself: *Wallwyn v. Coutts*, 3 Mer. 707; *Garrard v. Lauderdale*, 3 Sim. 1; 2 R. & M. 451; *Bill v. Cureton*, 2 M. & K. 511; *Acton v. Woodgate*, 2 M. & K. 492; *Ravenshaw v. Hollier*, 7 Sim. 3; *Gibbs v. Glamis*, 11 Sim. 584; *Steele v. Murphy*, 3 Moore, P. C. 445; *Law v. Bagwell*, 4 Dr. & W. 398; *Smith v. Keating*, 6 C. B. 136; *Glegg v. Rees*, 7 Ch. 71; *Henriques v. Bensusan*, 20 W. R. 350; *Johns v. James*, 8 Ch. D. 744.

not acted upon.

Where there is to be no performance of the trust without the previous request of the debtor the rule applies with even greater force: *Evans v. Bagwell*, 2 C. & L. 612.

Where trustees not to act without consent of debtor.

The trustee himself may retain his own debt out of the assigned property; *Wilding v. Richards*, 1 Coll. 655; *Siggers v. Evans*, 5 E. & B. 367; and see *Hobson v. Thelluson*, L. R. 2 Q. B. 642.

Retainer by trustee.

As to the effect of the settlor's death upon the rights of unpaid creditors without notice, see *Synnot v. Simpson*, 5 H. L. C. 139; *Montefiore v. Browne*, 7 H. L. C. 266.

Death of settlor.

If the trust for creditors is to take effect on death, with subsequent trusts in favour of others, it seems that the debts are properly and primarily payable under the deed, the creditors then becoming *cestuis que trust*: *Synnot v. Simpson*, *supra*; *Montefiore v. Browne*, 7 H. L. C. 266.

Creditors made *cestuis que trust*.

And after a creditor had set up a claim to a priority, which failed, the Court refused to interfere with the discretion of the trustees, who had declined to admit him to take under the deed: *Brandling v. Plummer*, 6 W. R. 118.

Adverse claim.

If there has been an assignment to a trustee for creditors, the trustee can maintain an action to get in

Action by trustee to

recover  
assets.

part of the debtor's estate without making the creditors parties : *Glegg v. Rees*, 7 Ch. 71.

Limit of  
doctrine.

It has been said that the principles applicable to voluntary trusts for creditors will not be extended to cases of trusts for other descriptions of volunteers : *Paterson v. Murphy*, 11 Hare, 88.



## CHAPTER IX.

### OF EXECUTORY TRUSTS.

“AN executory trust, as opposed to a trust executed [which is one declared by and contained in the instrument itself], is a trust raised by a stipulation or direction in marriage articles, or in a deed or will, to make a conveyance, settlement, or assurance to uses, or upon trusts, which do not appear to be formally and finally declared by the instrument containing such stipulation or direction :” *Fearne*, § 489 ; *Stamford v. Hobart*, 3 B. P. C. 31—33 ; *Sackville West v. Holmesdale*, L. R. 4 H. L. 553.

What is an executory trust.

Where, therefore, an executory trust arises, the Court will not direct a conveyance according to the informal expressions, but one to be made in a proper legal manner so as may best answer the interest of the parties : *Stamford v. Hobart*, 3 B. P. C. 31—33 ; *Glenorchy v. Bosville*, 1 W. & T. L. C. 16.

Power of its execution by the Court.

The instances of the application of this rule are generally those of marriage articles in which there being a limitation to the husband for life, with a remainder to the heirs or heirs male of his body, or his issue, or the like, an introduction of such a limitation into the formal settlement would, according to the rule in *Shelley's case* (1 Co. Rep. 93), vest an immediate estate of inheritance in the husband, which he could forthwith dispose of by conveyance or statutory bar ; thereby destroying the very intent of the settlement : *Sackville West v. Holmesdale*, L. R. 4 H. L. 553, 561, 572.

Effect of the rule in *Shelley's case*.

But the application of this modifying power in the Court is different in the cases of wills ; for, whereas in

Distinction between case of

wills and  
marriage  
articles.

the case of articles the nature of the case, the propriety of providing for the issue, &c., afford sufficient ground for treating the articles in such a way as that the purposes shall not be defeated, in a will there is no such guide, except the intention to be gathered from the document itself, and thus if the testator has been "his own conveyancer" and has left nothing incomplete, but has shewn the limitations to be inserted in the formal settlement, such limitations cannot be moulded by the Court, and will be treated as executed legal gifts: *Rochfort v. Fitzmaurice*, 2 Dr. & W. 21; *Egerton v. Brownlow*, 4 H. L. C. 210; *Austen v. Taylor*, 1 Ed. 361; *Sackville West v. Holmesdale*, L. R. 4 H. L. 561.

This distinction (which was apparently denied by Lord Hardwick in *Bagshaw v. Spencer*, 1 Ves. Sen. 150) is now clearly established with regard to the means of testing whether a trust is executory or not; in the mode of executing it there is no difference when its executory nature has been ascertained; *Jervoise v. Duke of Northumberland*, 1 J. & W. 571, explaining *Countess of Lincoln v. Duke of Newcastle*, 12 Ves. 227; *Rochfort v. Fitzmaurice*, 2 Dr. & W. 29, 30.

### *Executory Trusts in Marriage Articles.*

In marriage  
articles:  
limitations  
to parents  
and heirs  
of their  
bodies.

In antenuptial articles if there be a limitation to the parents for life, with a remainder to the heirs of their bodies, the latter words are generally considered as words of purchase and not of limitation, and such articles are thus construed in drawing the formal settlement; *Fearn*, 90, 8th ed.; *Trevor v. Trevor*, 1 Eq. Ca. Ab. 387; 2 B. P. C. 122; *White v. Thornborough*, 2 Vern. 702.

Husband's  
lands:  
special  
entail.

A settlement in pursuance of articles agreeing to settle lands of the husband for his and his wife's joint lives, and afterwards to the use of the heirs of his body by the wife, must provide for the issue by a limitation to the children successively, and not by the words used in the articles, which would in effect allow the husband or wife to bar the entail: *Streatfield v. Streatfield*, Talb. 176.

The doctrine is the same as to the wife's lands : *Jones v. Langhton*, 1 Eq. Ca. Ab. 392. Wife's lands.

Or where the limitations are in favour of the issue of both husband and wife : *Nandike v. Wilkes*, Gilb. 814 ; *Burton v. Hastings*, *ib.* 113. Issue of both husband and wife.

But the rule does not apply where the settlement is in such a form as that neither the husband nor the wife can bar alone, but jointly only : *Highway v. Banner*, 1 B. C. C. 584 ; *Honor v. Honor*, 1 P. Wms. 123 ; and see *per* Lord Hatherley in *Sackville West v. Holmesdale*, L. R. 4 H. L. 554, 555, 560 ; but see 3 & 4 Will. 4, c. 74, s. 16 (Fines and Recoveries Act), and *per* Lord St. Leonards in *Rochfort v. Fitzmaurice*, 2 Dr. & W. 19. Exception where neither husband or wife can bar alone ;

Nor will a strict settlement be decreed if by the articles other provision is made for the issue : *Chambers v. Chambers*, Fitzgibbon, 127. Exception where issue otherwise provided for.

If the settlement have been made previous to the marriage, but in express pursuance or part performance of articles, the Court will, without requiring any evidence, rectify the settlement so as to make it correspond with the articles : *Warrick v. Warrick*, 3 Atk. 291 ; *Bold v. Hutchinson*, 5 D. M. & G. 558 ; *Honour v. Honour*, 2 Vern. 658 ; 1 P. W. 123 ; *West v. Errissey*, 1 B. P. C. 225, reversing 2 P. W. 349 ; but see *Breadalbane v. Chandos*, 2 M. & Cr. 711 ; *Burton v. Hastings*, Gilb. 113 ; *Powell v. Price*, 2 P. W. 535. Rule applies where settlement under articles is antenuptial.

But if the settlement can be taken as a new agreement, or as expressing some altered intention, or include other property, the settlement, and not the articles, will be followed : *Legg v. Goldwire*, Talb. 20 ; *Symonds v. Wilkes*, 11 Jur. N. S. 659 ; see *Luders v. Anstey*, 4 Ves. 501 ; Amb. 315. Secus, if agreement in articles varied.

In such a case the settlement will be treated as voluntary and void against a purchaser for value : *Trowell v. Shenton*, 8 Ch. D. 318 ; compare *Teasdale v. Braithwaite*, 5 Ch. D. 630 ; *Re Foster and Lister*, 6 Ch. D. 87.

It seems, however, that this would now be a case for the admission of parol evidence to prove that a mistake Rectification on evi-

dence of  
mistake.

had been made, and that the Court would rectify the settlement or not accordingly: *Bold v. Hutchinson*, *supra*; *Rogers v. Earl*, 1 Dick. 294, and the cases cited in Sugd. V. & P. 172, n. (i); *Loxley v. Heath*, 1 D. F. & J. 489.

Contract  
in articles  
must be  
performed  
by post-  
nuptial  
settlement.

Where the settlement is postnuptial, the articles will be followed if a distinct contract is contained in them, subject of course to their executory nature: *Hammersley v. De Biel*, 12 Cl. & F. 45; and see *Smith v. Iliffe*, 20 Eq. 666; *Cogan v. Duffield*, 20 Eq. 789, aff. 2 Ch. D. 44; *Lee v. Lee*, 4 Ch. D. 175.

Females  
included in  
"issue."

If the limitation be to issue, females are entitled as well as males: *Hart v. Middlehurst*, 3 Atk. 371; and see *West v. Errissey*, 2 B. P. C. 327; *Trevor v. Trevor*, 1 H. L. C. 239; Gilbert, *Lex Prætoria*, 253.

Form of  
settlement  
on females.

Where the articles provide for the issue of the marriage, their heirs and assigns, the settlement will be directed on an only son in tail, with remainder to the daughters as tenants in common in tail with cross-remainders: *Phillips v. James*, 2 Dr. & Sm. 404, aff. 13 W. R. 934; and see *Re Grier*, 1 R. 6 Eq. 1; L. R. 5 H. L. 688.

Joint  
tenancy,  
read  
tenancy in  
common.

And words importing a joint tenancy will be construed to mean a tenancy in common, if the trust is intended for the benefit of all the children; *Taggart v. Taggart*, 1 Sch. & L. 84; *Mayn v. Mayn*, 5 Eq. 150.

Limitation  
over on  
death  
under 21.

In that case there would also be inserted a provision limiting over the property on death of children under 21: *ibid.*; *Cogan v. Duffield*, 2 Ch. D. 44, and the cases there cited.

Where  
joint  
tenancy  
implied.

If, however, a limitation be to children *simpliciter*, a joint tenancy must be inferred on the ground that the instrument is not executory: *De Havilland v. De Saumarez*, 14 W. R. 118; *Mayn v. Mayn*, 5 Eq. 152; *Re Bel-lasis*, 12 Eq. 218.

Rule not  
applied  
against  
purchasers  
for value  
without  
notice.

The Court refuses to vary the limitations against a purchaser for value without notice: *West v. Errissey*, *supra*; *Warrick v. Warrick*, 3 Atk. 291.

But it will enforce the articles against a purchaser with

notice, except where after a lapse of time there is anything so equivocal or ambiguous in the articles as to render it doubtful how they ought to be effectuated: *Thompson v. Simpson*, 1 Dr. & War. 491.

Nor will it interfere where the articles themselves are not produced: *Cordwell v. Mackrill*, Amb. 515; 2 Ed. 344; *Mignan v. Parry*, 31 Beav. 211.

Nor where articles not produced.

### *Executory Trusts in Wills.*

In the case of wills, the object of the testator can be gathered only from the words he uses; and therefore there is not the guide to his purpose which is furnished in the case of marriage articles by the nature of the intended relation between the parties. Thus the Court will mould executory limitations in a will only where the testator has declared the trust in an imperfect or inaccurate manner. In other words, if the testator has been "his own conveyancer," *i.e.*, has sufficiently shewn the limitations to be inserted in the contemplated instrument, no deviation from those limitations will be permitted: *Blackburn v. Stables*, 2 V. & B. 369; *Egerton v. Brownlow*, 4 H. L. C. 1; *Jervoise v. Duke of Northumberland*, 1 J. & W. 559; *Rochfort v. Fitzmaurice*, 2 Dr. & W. 1; *Doncaster v. Doncaster*, 3 K. & J. 26; *Sackville West v. Holmesdale*, L. R. 4 H. L. 543; *Duncan v. Bluett*, I. R. 4 Eq. 469; *Re Nelly*, W. N. 1877, 120, *aff. ib.* 222.

In wills: when trusts are executory and when not.

In the following cases the testator has been treated as "his own conveyancer":—

Where he has directed that a proper entail shall be made upon the heir male of each devisee as he came into possession, which will give each heir male an estate in tail male: *Blackburn v. Stables*, 2 V. & B. 367; *Britton v. Twining*, 3 Mer. 176; *Sealy v. Stawell*, I. R. 2 Eq. 326, 351; *Marshall v. Bousfield*, 2 Mad. 166; but see *Jervoise v. Duke of Northumberland*, *supra*.

Cases where trusts not modified.

A "proper entail" to be made on each heir male.

Where the trust is to settle lands on A. and the heirs of his body: *Seale v. Seale*, 1 P. W. 290; *Sweetapple v.*

To A. and the heirs of his body.

*Bindon*, 2 Vern. 536 ; *Marryat v. Townly*, 1 Ves. Sen. 104 ; but see *Bastard v. Proby*, 2 Cox, 6.

To A. for  
separate  
use and  
then to  
convey to  
her heirs.

Or to A. for her separate use for life, and then upon trust to convey to her heirs : *Jackson v. Noble*, 2 Keen, 590 ; but see *Roberts v. Dixwell*, 1 Atk. 607 ; *Stonor v. Curwen*, 5 Sim. 264 ; compare *Teasdale v. Braithwaite*, 5 Ch. D. 630.

Trusts by  
reference.

Where the lands are to be settled by reference to the trusts of other lands : *Austen v. Taylor*, 1 Ed. 361 ; but see *Papillon v. Voice*, 2 P. W. 470 ; *Green v. Stephens*, 17 Ves. 76 ; *Sackville West v. Holmesdale*, *supra*.

In the above cases the intention to confer an estate tail or absolute interest was held to be sufficiently expressed to prevent it from being cut down to a life estate in the first taker.

Cases  
where  
trusts  
modified.

The cases in which the Court has moulded the testator's will, by directing a strict settlement or otherwise, are as follows :—

Restriction  
on barring  
entail.

A devise to a son and the heirs of his body, with a restriction as to "docking the entail," was turned into a life estate in him, but without impeachment of waste : *Leonard v. Sussex*, 2 Vern. 526 ; see 2 Jarm. Wills, p. 328 ; *Thompson v. Fisher*, 10 Eq. 207 ; and see *Woolmore v. Burrows*, 1 Sim. 512.

Remainder  
to issue.

A direction to settle lands upon trusts for A. for life, with remainders over to the heirs of his body, or to his issue simply : *Glenorchy v. Bosville*, 1 W. & T. L. C. 1 ; *Papillon v. Voice*, 2 P. W. 471 ; *Trevor v. Trevor*, 1 H. L. C. 239 ; but see *Austen v. Taylor*, 1 Ed. 361.

Person  
dying with-  
out issue.

Where there is a gift over on the devisee dying without issue : *Shelton v. Watson*, 16 Sim. 543 ; *Thompson v. Fisher*, 10 Eq. 207.

Separate  
use and  
gift over.

A direction to convey to the separate use of A. for life, so that her husband should not intermeddle therewith, with remainder to the heirs of her body : *Roberts v. Dixwell*, 1 Atk. 607 ; *Stonor v. Curwen*, 5 Sim. 264.

As counsel

Where there is a direction that the lands shall be

settled as counsel shall advise: *Bastard v. Proby*, 2 Cox, 6; *White v. Carter*, 2 Ed. 366; *Sackville West v. Holmesdale*, L. R. 4 H. L. 543. shall advise.

Or as the executors or trustees shall think proper: *Read v. Snell*, 2 Atk. 642, 648; *Sackville West v. Holmesdale*, *supra*. As trustees shall think proper.

A limitation of lands to be settled according to the limitations of a peerage, to the peers and the heirs of their bodies, will be effected by giving successive estates for life to each taker: *Sackville West v. Holmesdale*, L. R. 4 H. L. 543; *Cope v. Earl De la Warr*, 8 Ch. 982. Trusts by reference to limitation of peerage.

If the executory limitations proposed by the testator would be void for remoteness, the Court will put the settlement within the permitted limits: *Humberston v. Humberston*, 1 P. W. 332; *Lyddon v. Ellison*, 19 Bea. 565; but see *Blagrove v. Hancock*, 16 Sim. 371. Where trusts too remote.

### *Frame of the Settlement Directed.*

The Court will include females as comprised in the term "heirs of the body:" *Bastard v. Proby*, 2 Cox, 6. Females included as "heirs of body:"

Or "issue:" *Meure v. Meure*, 2 Atk. 265; *Trevor v. Trevor*, 13 Sim. 108; 1 H. L. C. 239; *Mason v. Mason*, L. R. 5 Eq. 288. or "issue."

And if to the separate use of females, it will be without power of anticipation: *Turner v. Sargent*, 17 Bea. 515; *Re Dunnill*, L. R. 6 Eq. 322; *Teasdale v. Braithwaite*, 5 Ch. D. 630. Separate use.

It is not a matter of course that a protector of the settlement will be appointed by the Court: *Bankes v. Le Despencer*, 11 Sim. 508. Protector not always appointed.

The life estates are generally limited *sans* waste: *Leonard v. Sussex*, 2 Vern. 526; *Sackville West v. Holmesdale*, L. R. 4 H. L. 543; but see *Davenport v. Davenport*, 1 H. & M. 779; *Stanley v. Coulthurst*, 10 Eq. 259. Life estates made "sans waste."

But not if there is a restraint against anticipation: *Clive v. Clive*, 7 Ch. 433. Restraint against anticipation.

Gavelkind  
lands.

If the lands are gavelkind the Court directs a strict settlement without reference to the custom : *Roberts v. Dixwell*, 1 Atk. 607.

Joint  
tenancy.

A clear intention to provide for the several benefit of each one of the issue will enable the Court to turn a joint tenancy into a tenancy in common : *Synge v. Hales*, 2 B. & B. 499 ; *Marryat v. Townly*, 1 Ves. Sen. 101.

Personalty,  
under  
words ap-  
plying to  
realty.

Personalty to be settled under words applicable to realty only will be limited in the manner which will best show the testator's purpose : *Loch v. Bagley*, 4 Eq. 122.

What  
powers  
will be  
inserted.

Where the testator directs "all usual powers" to be inserted in the settlement, powers of management may be inserted, *e.g.*, of leasing, granting building leases, sale and exchange, partition, transposition of securities, appointment of new trustees : *Hill v. Hill*, 6 Sim. 144 ; *Bedford v. Abercorn*, 1 M. & Cr. 312 ; *Sampayo v. Gould*, 12 Sim. 426 ; but see *Brewster v. Angell*, 1 J. & W. 628.

Power to  
jointure  
and charg-  
ing por-  
tions.

But not powers of jointuring or charging portions, for the Court cannot say to what extent such charges should go : *Hill v. Hill*, *supra* ; *Higginson v. Barneby*, 2 S. & S. 516 ; *Re Grier*, 1 R. 6 Eq. 1 ; S. C. L. R. 5 H. L. 688 ; but see *Mason v. Mason*, 1 R. 5 Eq. 288. But if the will gives powers of jointuring and charging portions, and the codicil directs a settlement with such powers as counsel should advise, they will be inserted into the settlement : *Sackville West v. Holmesdale*, L. R. 4 H. L. 543.

Powers of  
mainte-  
nance, &c.

But powers of maintenance, education and advancement may be put in as "usual powers" : *Mayn v. Mayn*, 5 Eq. 150 ; see *Turner v. Sargent*, 17 Bea. 515.

Where  
some  
powers  
mentioned  
by testator.

If some powers are mentioned by the testator, no others will be inserted, unless from the context of the general words referring to such powers it can be gathered that the testator only meant that those mentioned should be put in at all events : *Lindow v. Fleetwood*, 6 Sim. 152 ; *Pearse v. Baron*, Jac. 158 ; *Brewster v. Angell*, *supra*.

Where will  
silent as to  
powers.

If the will is silent as to the powers to be conferred, powers of leasing, sale and exchange, may be introduced in the settlement : *Turner v. Sargent*, 17 Bea. 515.



And a power to renew leases : see *post*, p. 149.

Or a power to appoint to a husband for life : *Charlton v. Rendall*, 11 Ha. 296.

If the direction in the will to settle is too vague, as to settle "on marriage," the Court cannot execute it at all : *Magrath v. Morehead*, 12 Eq. 491.

But in articles a direction to settle upon "younger children" is not held to be so vague as not to be capable of execution : *Brenan v. Brennan*, I. R. 2 Eq. 266.

Vague direction to settle "on marriage."

To settle on "younger children."

### *Executory Trusts of Chattels by reference to Limitations of Real Estate.*

If the trust to settle chattels upon trusts corresponding to those of realty be *executory* (according to the definition of that term in the case of articles), the Court will prevent the vesting of the chattels in the first tenant in tail at his birth (as would be the case in an *executed* trust) by a condition that he shall attain 21 or die under that age leaving issue : *Duke of Newcastle v. Countess of Lincoln*, 3 Ves. 387, 12 Ves. 218 ; *Scarsdale v. Curzon*, 1 J. & H. 51.

Where vesting in tenant in tail at birth prevented.

It is not sufficient, either in the case of a will or of articles, to add such words as "so far as the rules of law or equity will permit," to make the trusts executory : *Vaughan v. Burslem*, 3 B. C. C. 101 ; *Carr v. Erroll*, 14 Ves. 478 ; *Scarsdale v. Curzon*, *supra* ; *Christie v. Gosling*, L. R. 1 H. L. 279 ; *Harrington v. Harrington*, L. R. 5 H. L. 87.

Effect of words "so far as rules of law or equity permit."

And on a direction in a clearly executory form that each eldest son on coming into possession shall take jewels as heirlooms, effect will be given to the intention so as to prevent any absolute vesting while there should be any person to take on attaining 21, or dying under 21 leaving a son : *Shelley v. Shelley*, 6 Eq. 540.

Executory settlement of jewels on eldest sons.

## CHAPTER X.

### PRECATORY TRUSTS.

Meaning  
of term.

“WORDS accompanying a gift or bequest expressive of hope or desire, of confidence, belief, or even of recommendation, that a particular application will be made by the donee, are sufficient to create a trust, if the donee cannot but choose to make such application; if the subject matter of the gift be ascertainable; and if the objects are expressed in a manner not too vague or indefinite to be enforced by a court of equity.” *Briggs v. Penny*, 3 Macn. & G. 546; and see 1 Jarm. Wills, 354, *et seq.*; the notes to *Harding v. Glyn*, 2 W. & T. L. C. 962; Theobald on Wills, p. 254, *et seq.*

May be  
created by  
deed or  
will.

It seems that a precatory trust may be created in a settlement by deed: *Liddard v. Liddard*, 28 Bea. 266.

Precatory  
words  
importing  
trust.

1. Words which have been held to import a trust :

“Will” or “desire”: *Eales v. England*, Pr. Ch. 200; 2 Vern. 467; *Harding v. Glyn*, 1 Atk. 469; *Pushman v. Filliter*, 3 Ves. 7; *Bonsor v. Kinnear*, 2 Giff. 195; *Liddard v. Liddard*, 28 Bea. 266; but see *Stead v. Mellor*, 5 Ch. D. 225.

“Will and desire”: *Birch v. Wade*, 3 V. & B. 198; *Forbes v. Ball*, 3 Mer. 437.

“Beg”: *Corbet v. Corbet*, 1 R. 7 Eq. 456.

“Beg and request”: see *Green v. Marsden*, 1 Dr. 646.

“Entreat”: *Prevost v. Clarke*, 2 Madd. 458; *Meredith v. Heneage*, 1 Sim. 553.

"Require and entreat": *Taylor v. George*, 2 V. & B. 378.

"Request": *Pierson v. Garnet*, 2 B. C. C. 38; *Eade v. Eade*, 5 Madd. 118; *Moriarty v. Martin*, 3 Ir. Ch. R. 26; see *Bernard v. Minshull*, Johns. 276.

"Wish and request": *Foley v. Parry*, 2 M. & K. 138.

"Last wish": *Hinxman v. Poynder*, 5 Sim. 546.

"Dying wish" or "request": *Godfrey v. Godfrey*, 11 W. R. 554; *Pierson v. Garnet*, 2 B. C. C. 38.

"Direct" or "order and direct": *White v. Briggs*, 2 Ph. 583; *Cary v. Cary*, 2 Sch. & L. 189.

"Trusting": *Pilkington v. Boughey*, 12 Sim. 114; see *Irvine v. Sullivan*, 8 Eq. 673.

"Hoping": *Harland v. Trigg*, 1 B. C. C. 142; *Paul v. Compton*, 8 Ves. 380; but see *Eaton v. Watts*, 4 Eq. 151.

"Not doubting": *Taylor v. George*, 2 V. & B. 378; *Parsons v. Baker*, 18 Ves. 476; *Sale v. Moore*, 1 Sim. 534; but see *Eaton v. Watts*, 4 Eq. 151.

"Fullest confidence": *Palmer v. Simmonds*, 2 Dr. 225; *Ware v. Mallard*, 16 Jur. 492; *Shovelton v. Shovelton*, 32 Bea. 143; *Curnick v. Tucker*, 17 Eq. 320; *Le Marchant v. Le Marchant*, 18 Eq. 414; but see *Fox v. Fox*, 27 Bea. 301; *Re Hutchinson and Tenant*, 8 Ch. D. 543.

"Confiding in": *Pilkington v. Boughey*, 12 Sim. 114; *Griffiths v. Evans*, 5 Bea. 241; *Shepherd v. Nottidge*, 2 J. & H. 766; but see *Wood v. Cox*, 2 M. & Cr. 684.

"Well assured": *Ray v. Adams*, 3 M. & K. 237; *Macnab v. Whitbread*, 17 Bea. 299; *Gully v. Cregoe*, 24 Bea. 185.

"In the firm conviction": *Burnes v. Grant*, 26 L. J. Ch. 92; 2 Jur. N. S. 1127; *Gully v. Cregoe*, 24 Bea. 185.

"Convinced": *Hart v. Tribe*, 18 Bea. 215.

"Well knowing": *Briggs v. Penny*, 3 Macn. & G. 546.

"In the full belief": *Fordham v. Speight*, W. N., 1875, 140.

"Recommend": *Malim v. Keighley*, 2 Ves. Jun. 333; *Meggison v. Moore*, 2 Ves. Jun. 630; *Paul v. Compton*, 8 Ves. 380; *Tibbits v. Tibbits*, 19 Ves. 657; *Meredith v.*

*Heneage*, 1 Sim. 553; *exp. Payne*, 2 Y. & C. C. C. 636; *Cholmondeley v. Cholmondeley*, 14 Sim. 590; but see *Meggison v. Moore*, 2 Ves. Jun. 630; *Sale v. Moore*, 1 Sim. 534; *Johnston v. Rowlands*, 2 De G. & Sm. 356; *Lefroy v. Flood*, 4 I. Ch. R. 1.

"Authorise and empower": *Brown v. Higgs*, 4 Ves. 708, 18 Ves. 192.

Degrees of  
cogency of  
such ex-  
pressions.

These various forms of expression are not of equal force and cogency; words of recommendation, or request, or of hope, are hardly so strong as those of entreaty or confidence, and their construction as a command must depend upon the language used in each particular instrument: *Eaton v. Watts*, 4 Eq. 151.

Precatory  
trust as  
binding as  
any other.

The principle that a trust with all its consequences may be created by precatory words, though now well settled, has not been universally approved and is not likely to be extended: *Sale v. Moore*, 1 Sim. 534; *Lambe v. Eames*, 6 Ch. 597; *Stead v. Mellor*, 5 Ch. D. 225; *Re Hutchinson and Tenant*, 8 Ch. D. 543.

2. The donee must be so bound that he cannot but choose to carry the expressed wish into execution.

Trust de-  
feated by  
power to  
except.

A power expressly or impliedly given to withdraw a portion of the property from the operation of the alleged trust, will defeat it *in toto*: *Cole v. Hawes*, 4 Ch. D. 238.

Restric-  
tions on  
enjoyment.

A devisee in tail cannot be prevented from barring it by words of trust or confidence that he will not do so: *Dawkins v. Penrhyn*, 6 Ch. D. 318; see *post*, p. 84.

Trusting to  
liberality  
for speci-  
fied object.

So a gift trusting to the donee's "liberality" to reward others and to retain the estates in a particular line is not upon trust: *Knight v. Boughton*, 11 Cl. & F. 513.

"Bulk"  
or "what  
is left" too  
indefinite.

If the testator uses such words as the "bulk" or "what is left" as intended to be affected by his desire or recommendation, no trust arises: *Palmer v. Simmonds*, 2 Drew. 221; *Pushman v. Filliter*, 3 Ves. 7; *Wynne v. Hawkins*, 1 Bro. C. C. 179.

Injunction  
to leave

So also if the wish is that the donee will leave *his*

property, and not the testator's, in a particular way, there is no trust: *Eade v. Eade*, 5 Madd. 119; *Lechmere v. Lavie*, 2 M. & K. 201; see and consider *Horwood v. West*, 1 S. & S. 387; *Parnall v. Parnall*, W. N. 1878, 188.

donee's  
property  
void.

There will be no trust if the gift is qualified by such words as "unfettered" and "unlimited": *Meredith v. Heneage*, 1 Sim. 553; 10 Price, 230; *White v. Briggs*, 15 Sim. 33.

"Unfettered"  
estate  
trust.

Or, "in the entire power" or "judgment": *Eaton v. Watts*, 4 Eq. 151; and see *McCormick v. Grogan*, L. R. 4 H. L. 82.

Or "in  
entire  
power,"  
&c.

Or "quite at liberty to give and distribute what and to whom she pleased": *Cole v. Hawes*, 4 Ch. D. 238.

"Quite at  
liberty,"  
&c.

Or "not absolutely enjoin": *Young v. Martin*, 2 Y. & C. C. C. 582.

"Not ab-  
solutely  
enjoin."

A desire that a person should "continue" to act as agent of the estates at the usual charge, has been held not to be binding on the executors: *Shaw v. Lawless*, 5 Cl. & F. 129; but see *Williams v. Corbet*, 8 Sim. 349.

Agent of  
testator to  
be con-  
tinued.

Words of expectation or advice following what is held to be intended as an absolute gift create no trust: *Lechmere v. Lavie*, 2 M. & K. 197; *Scott v. Key*, 35 Bea. 291.

Words of  
advice.

Thus a wish that the donee will "do justice to" the donor's children, gives them no interest: *Ellis v. Ellis*, 23 W. R. 382; and see *Cole v. Hawes*, 4 Ch. D. 238.

"Do  
justice to."

Or that he will "take care of" the property for the good of the children: *Pope v. Pope*, 10 Sim. 1.

"Take  
care of."

Or, to "be kind to;" "remember;" "consider;" *Bug-gins v. Yates*, 9 Mod. 122; *Bardswell v. Bardswell*, 9 Sim. 319; *Sale v. Moore*, 1 Sim. 534.

"Be kind  
to," &c.

So no trust arises if the desire or recommendation is one which the Court could not enforce if it were to be construed as a trust: *Hood v. Oglander*, 34 Bea. 513; *Graves v. Graves*, 13 I. Ch. R. 182.

Or desire  
not en-  
forceable  
by Court as  
a trust.

An absolute gift, with a trust superadded for others after the death of the donee, does not prevent the exercise of the usual acts of ownership by a tenant for life, such as

Rights of  
trustee  
during  
his own  
enjoyment.

cutting timber in a husbandlike manner: *Wright v. Atkyns*, T. & R. 143, 163.

But security must be given that the property will be retained *in statu quo*: *ibid.*; *Hands v. Hands*, 1 T. R. 437 n.

3. Certainty of the objects and property referred to by the testator:

“Re’a-  
tions.”

The word “relations” has been thought a sufficient description of the objects: *Harding v. Glyn*, 1 Atk. 469; *Birch v. Wade*, 3 V. & B. 198; and see *Cole v. Hawes*, 4 Ch. D. 238. And if the trust be not executed by the donee during his life, the Court will declare the next of kin according to the Statutes entitled: *Harding v. Glyn*, *supra*.

“Descend-  
ants.”

“Descendants” are ascertainable within the rule: *Pier-son v. Garnet*, 2 B. C. C. 38, 226; *Parsons v. Baker*, 18 Ves. 476.

“Family.”

It seems that the word “family” is too vague with respect to personalty: *Harland v. Trigg*, 1 B. C. C. 142; *Wright v. Atkyns*, T. & R. 159; *Stubbs v. Sargon*, 2 Keen, 255; *Lambe v. Eames*, 6 Ch. 597; *Re Hutchinson and Tenant*, 8 Ch. D. 542, in which it was held to mean children. But see *Cruwys v. Colman*, 9 Ves. 319; *Green v. Marsden*, 1 Dr. 651. With respect to realty, “family” if not otherwise controlled by the context may mean the heir-at-law: *Wright v. Atkyns*, *supra*; *Green v. Marsden*, *supra*.

“Heirs.”

“Heirs,” without some indication as to who were intended to take is too vague, where the gift includes both realty and personalty: *Meredith v. Heneage*, 1 Sim. 542.

Indefinite  
object not  
to defeat  
trust once  
estab-  
lished.

If it be once established that a trust was intended, the legatee cannot take beneficially, although the objects may be too vague to be enforced: *Briggs v. Penny*, 3 McN. & G. 546; *Bernard v. Minshull*, Johns. 276.

If it fail,  
heir or next  
of kin  
entitled.

In that case the trust is established in favour of the heir or next of kin, as on the failure of a trust in any other case: *ibid.*; *Morice v. Bishop of Durham*, 10 Ves. 521.

Where the absolute interest first given is followed by a direction to *dispose* of the property for the benefit of children, the donee takes a life interest with a power to appoint amongst the children : *Wace v. Mallard*, 21 L. J. Ch. 355 ; *Gully v. Cregoe*, 24 Bea. 185 ; *Shovelton v. Shovelton*, 32 Bea. 143 ; *Curnick v. Tucker*, 17 Eq. 320 ; *Le Marchant v. Le Marchant*, 18 Eq. 414 ; *Fordham v. Speight*, W. N. 1875, 140, 23 W. R. 782 ; but see *Barnes v. Grant*, 26 L. J. Ch. 92 ; *Lambe v. Eames*, 6 Ch. 597 ; *Re Hutchinson and Tenant*, 8 Ch. D. 543.

Absolute gift with power of appointment among children.

What interest is taken by the children will not be declared by the Court till the death of the tenant for life, or, if the question is raised by demurrer, at least until the hearing : *Crockett v. Crockett*, 2 Ph. 553 ; *Hart v. Tribe*, 18 Bea. 215 ; *Shovelton v. Shovelton*, *supra*.

When interests of children declared.

On default of appointment the Court will exercise the power : *Harding v. Glyn*, 1 Atk. 469 ; *Brown v. Higgs*, 8 Ves. 561, 572.

Default of appointment.

The shares of married daughters may in such a case be properly limited to their separate use : *Willis v. Kymer*, 7 Ch. D. 181.

Limiting shares to separate use.

If the precatory words clearly raise a trust for the children to take effect on the donee's death, the trust is a vested interest in the children subject to the life estate : *Pierson v. Garnet*, 2 B. C. C. 38 ; *Crockett v. Crockett*, 2 Ph. 553, 5 Ha. 326 ; *Newill v. Newill*, 7 Ch. 253 ; and see *Lewis v. King*, 2 B. C. C. 600 ; *Malim v. Keighley*, 2 Ves. Jun. 529 ; and see *Horwood v. West*, 1 S. & S. 387 ; *Armstrong v. Armstrong*, 7 Eq. 518. *Cunliffe v. Cunliffe*, Amb. 686, has been doubted, if not overruled.

Vested interest on trustee's death.

But where the donee and the children are described together as objects of the precatory trust, and no contrary intention appears, they take the property as joint tenants : *Jubber v. Jubber*, 9 Sim. 503 ; *Godfrey v. Godfrey*, 11 W. R. 554 ; *Hart v. Tribe*, 1 D. J. & Sm. 418 ; *Bibby v. Thompson*, 32 Bea. 646 ; *Newill v. Newill*, 7 Ch. 253.

Donee and children taking as a class.

## CHAPTER XI.

### OF RESULTING TRUSTS.

#### *Resulting Trust arising from Imperfect Disposition.*

WHERE the whole legal interest is given by devise or bequest for the purpose of satisfying trusts expressed, and those trusts do not exhaust the whole, so much of the beneficial interest as is not exhausted results to the heir or next of kin. But where the whole legal interest is given for a particular purpose with an intention to give to the devisee or legatee of the legal estate the beneficial interest, if the whole is not exhausted by that particular purpose, the surplus goes to the devisee or legatee, as it is intended to be given, and there is no resulting trust: *King v. Denison*, 1 V. & B. 273; *Hill v. Bishop of London*, 1 Atk. 618; *Culpepper v. Aston*, 2 Ch. Ca. 115, 223; *Roper v. Radcliffe*, 9 Mod. 171; *Cook v. Hutchinson*, 1 Keen, 50. The same principle applies to the case of a grant: *Northern v. Carnegie*, 4 Drew. 587.

Land devised in aid of personalty.

According to this principle land devised upon trust to pay debts, &c., in aid of personalty, results if the personalty prove sufficient: *Wych v. Packington*, 3 B. P. C. 44; *Bugbins v. Yates*, 9 Mod. 122.

Fee undisposed of.

Land devised to trustees and their heirs, but without any limitation of the ultimate beneficial fee simple, results to the heir: *Hobart v. Suffolk*, 2 Vern. 644.

Fund set apart for annuities.

A fund arising from the sale of land and directed to be set apart to serve annuities, but not itself disposed of, results to the heir: *Watson v. Hayes*, 5 M. & Cr. 125; and see *Sherrard v. Harborough*, Amb. 165.



Mere negative words will not exclude the trust for the heir: *Cook v. Duckenfield*, 2 Atk. 566; *Fitch v. Weber*, 6 Ha. 145. Heir not excluded by negative words.

Nor will a bare intention be allowed to disinherit the heir, but only a clear intention to be inferred from the expressions used throughout the will: *Hill v. Bishop of London*, 1 Atk. 618; *King v. Denison*, 1 V. & B. 273; *Phillips v. Phillips*, 1 M. & K. 649. And even then it must appear distinctly to whom the estate is to go: *Dunnage v. White*, 1 J. & W. 583; *Salter v. Cavanagh*, 1 Dr. & Walsh, 686. Nor by bare intention.

Words of tenderness or importing an intention of bounty towards a relative will have their effect as circumstances in favour of a beneficial gift as against the resulting trust: *Lloyd v. Spillet*, 2 Atk. 148; *Cook v. Duckenfield*, *supra*; *Coningham v. Mellish*, Pr. Ch. 31; *King v. Denison*, 1 V. & B. 273; *Rogers v. Rogers*, 3 P. W. 193; *Buggins v. Yates*, 9 Mod. 122. Gift to relatives.

A legacy to the heir is also regarded as an indication of intention to exclude him, not as necessarily rebutting the trust: *Starkey v. Brooks*, 1 P. W. 390; *Salter v. Cavanagh*, 1 Dr. & Walsh, 684; *Saltmarsh v. Barrett*, 3 D. F. & J. 279. Legacy to heir.

The use of the word "trust" or the description of the devisee as a "trustee" may be met by the context of the will showing a strong intention to give a beneficial interest: *Hill v. Bishop of London*, 1 Atk. 620; *Dawson v. Clarke*, 15 Ves. 409; *Cook v. Hutchinson*, 1 Keen, 42. Gift "upon trust."

But the use of such words of trust where no trust is sufficiently declared, affords ground for a strong presumption against the trustee being intended to take beneficially, and there is a resulting trust accordingly: *Dawson v. Clarke*, 18 Ves. 254; *Morice v. Bishop of Durham*, 10 Ves. 537; *Barrs v. Fewkes*, 2 H. & M. 60; *Aston v. Wood*, 6 Eq. 419.

So also where the trusts declared are too uncertain: *Stubbs v. Sargon*, 3 M. & Cr. 507; *Kendall v. Granger*, 5 Bea. 300. Trusts uncertain.

Or unde-  
clared.

Or where the trusts are proposed to be afterwards declared but are not so declared: *Emblyn v. Freeman*, Pr. Ch. 541; *Fitch v. Weber*, 6 Ha. 145; see *Biddulph v. Williams*, 1 Ch. D. 203, in which case, however, an appointment of trust funds had been made upon trusts intended to be, but which never were, declared, and evidence was admitted to shew the intention that there should be a resulting trust for those taking under the original settlement; and it was so held.

Or illegal.

Or where the trusts if carried into effect would be illegal: *Tregonwell v. Sydenham*, 3 Dow, 194; *Gibbs v. Rumsey*, 2 V. & B. 294.

Or fail.

Or where the trusts fail: *Ackroyd v. Smithson*, 1 W. & T. L. C. 949.

Words ap-  
plicable to  
personalty.

Where a testator in a will of land has used words of limitation applicable to real estate but has declared trusts applicable to personal estate only, the resulting trust enures for the benefit of the heir: *Dunnage v. White*, 1 J. & W. 583; *Lloyd v. Lloyd*, 7 Eq. 458; *Longley v. Longley*, 13 Eq. 133. For the cases of resulting trusts arising upon the doctrine of conversion, including the distinction between a devise upon trust and a devise subject to a particular purpose, which are matters arising rather upon the construction of wills than upon the law of trusts proper, see the notes to *Ackroyd v. Smithson*, 1 W. & T. L. C. 949; 1 Jarm. Wills, Ch. xix.; Theobald, 95—108.

### *Resulting Trusts from Want of Consideration.*

Resulting  
trust for  
grantor.

On the ground that a feoffment to a stranger without consideration raised a use in the feoffor, where no other trust was declared, a grant or lease to a stranger without consideration results to the grantor or lessor: *Norfolk v. Brown*, Pr. Ch. 80; *Warman v. Seaman*, 2 Free. 308; *Grey v. Grey*, 2 Swans. 598.

Exception  
in case of  
wife or  
child.

A grant to a wife or child is taken to intend an advancement, and no trust results to the grantor in that

case : *Grey v. Grey*, 2 Swans. 598; *Christ's Hospital v. Budgin*, 2 Vern. 683 ; see *infra*.

A nominal consideration in the case of a grant to a stranger will not avail to rebut the resulting trust : *Sculthorp v. Burgess*, 1 Ves. Jun. 92. Nominal consideration.

Securities and money simply made over without consideration must be taken to have been given absolutely unless such an inference can be rebutted : *George v. Howard*, 7 Price, 651, and see *ante*, ch. vii., on Voluntary Trusts. Gift of money, &c.

Resulting trusts are unaffected by the Statute of Frauds, which enacts that where any conveyance shall be made of any lands or tenements by which a trust or confidence shall or may arise or result by the implication or construction of law, or be transferred or extinguished by an act or operation of law, then and in every such case such trust or confidence shall be of the like force and effect as the same would have been if this Act had not been made : 29 Car. 2, c. 3, s. 8. Resulting trusts under s. 8 of Statute of Frauds

Parol evidence may therefore be given to rebut a resulting trust : *Lamplugh v. Lamplugh*, 1 P. W. 112 ; *Bellasis v. Compton*, 2 Vern. 294. Parol evidence

But it is admissible only where the trust arises from presumption of law—not to override the expressed intention of an instrument : *Langham v. Sandford*, 19 Ves. 643 ; *Gladding v. Yapp*, 5 Madd. 59. not against expressed intention.

### *Exclusion of Resulting Trust on purchases in the Name of a Child or Wife.*

A purchase of real or personal property whether in possession or reversion, by a parent or one *in loco parentis*, in the name of a child or adopted child, or by a husband in the name of his wife, is *prima facie* an advancement, and does not raise a resulting trust for the purchaser, unless the presumption of an advancement be rebutted by proper evidence to the contrary : *Dyer v. Dyer*, 2 Cox, 92 ; *Finch v. Finch*, 15 Ves. 43 ; *Currant v. Jago*, 1 Coll. Purchase in child's or wife's name is advancement unless rebutted.

261; *Lamplugh v. Lamplugh*, 1 P. W. 111; *Kingdon v. Bridges*, 2 Vern. 67, and the cases cited below.

Property  
contracted  
to be pur-  
chased.

The presumption of advancement will attach to property agreed to be purchased: *Redington v. Redington*, 3 Ridg. P. C. 106; *Vance v. Vance*, 1 Bea. 605; *Drew v. Martin*, 2 H. & M. 130; and see *Nicholson v. Mulligan*, 1 R. 3 Eq. 308.

Death  
before com-  
pletion.

In which case the estate of the purchaser is liable, *Ibid.*; and see *Crosbie v. McDoual*, 13 Ves. 148; *Skidmore v. Bradford*, 8 Eq. 134.

Receipt of  
rents by  
purchaser  
no rebut-  
tal;

The receipt of rents, or dividends, or interest, by the father by the permission of the son, whether an infant or adult, is of no avail to make the son a trustee: *Mumma v. Mumma*, 2 Vern. 19; *Gorge's Case*, cited Cro. Car. 550; *Taylor v. Taylor*, 1 Atk. 386; *Grey v. Grey*, 2 Swans. 594; *George v. Howard*, 7 Price, 651; *Sidmouth v. Sidmouth*, 2 B. 447; *Christy v. Courtenay*, 13 Bea. 96; *Beecher v. Major*, 2 Dr. & Sm. 431; *Williams v. Williams*, 32 Bea. 370; *Batstone v. Salter*, 19 Eq. 250, aff. 10 Ch. 431; but see *Loyd v. Read*, 1 P. W. 606.

unless  
coupled  
with other  
acts of  
ownership.

But coupled with other acts of ownership, the receipt of rents or dividends will help to show that no advancement was intended: *Murless v. Franklin*, 1 Swans. 13; *Grey v. Grey*, *supra*; *Stock v. McAvoy*, 15 Eq. 55.

Advance-  
ment good  
against  
purchasers.

A purchase by way of advancement is not within 27 Eliz. c. 4; *Gorge's Case*, Cro. Car. 550; *Glaister v. Hewer*, 8 Ves. 195; *Drew v. Martin*, 2 H. & M. 130.

But not  
against  
creditors.

But it is within 13 Eliz. c. 5, so as to be a ground for an inquiry as to the parent's solvency at the time: *Townsend v. Westacott*, 2 Bea. 340; 4 Bea. 58; *Christy v. Courtenay*, 13 Bea. 96; but see *Drew v. Martin*, *supra*.

Lifehold  
copyholds;  
father a  
*cestui que  
vie*;  
where  
father not  
a *cestui  
que vie*;  
successive  
interests.

If the purchase be of copyholds for lives, and the father put in the lives of himself, his wife, and his son, the son takes beneficially: *Dyer v. Dyer*, 2 Cox, 92.

The fact that the father does not put in his own life is not enough to countervail the rule: *Finch v. Finch*, 15 Ves. 43; *Murless v. Franklin*, 1 Swans. 13.

And sons advanced take successively: *Ibid.*; *Rundle v.*

*Rundle*, 2 Vern. 264; *Jeans v. Cooke*, 24 Bea. 513; and see note to *Withers v. Withers*, Amb. 151.

A custom in a manor that the persons for whose lives a grant is made should take beneficially, will not be good against a resulting trust: *Lewis v. Lane*, 2 M. & K. 449. Custom to contrary invalid.

In the case of a purchase of freeholds in the joint names of the father and son, in the absence of fraud, the trust is equally rebutted by the relationship: *Scroope v. Scroope*, 1 Ch. Ca. 27; *Back v. Andrew*, 2 Vern. 120; *Pole v. Pole*, 1 Ves. Sen. 76; see Sugd. V. & P. 705; and see *Stileman v. Ashdown*, 2 Atk. 477, where there was fraud. Purchase in joint names of father and son.

A previous complete advancement rebuts the presumption; as where the son was provided for on his marriage: *Elliot v. Elliot*, 2 Ch. Ca. 231; *Grey v. Grey*, 2 Swans. 594; and see *Hepworth v. Hepworth*, 11 Eq. 10. Rebuttal by previous advancement.

*Secus* where there has been only partial advancement: *Redington v. Redington*, 3 Ridg. 190; *Grey v. Grey*, Finch. 338; *Hepworth v. Hepworth*, 11 Eq. 10. Not by partial advancement.

An insurance on the life and in the name of a son, though it may be illegal on the ground that the father had no insurable interest, may, if paid, enure to the father if the facts shew no intention of advancement: *Worthington v. Curtis*, 1 Ch. D. 419, where the company paid notwithstanding the illegality. Insurance on son's life.

Where a father transfers Consols into the names of his two daughters under circumstances shewing that he did not mean to part with the control of the fund, or that he did it to save legacy duty, the balance and accretions at his death are part of his estate: *Bone v. Pollard*, 24 Bea. 283. Intention to retain control of property.

A purchase in the name of a son in order to give him a vote may be treated as a benefit only, and not in fraud of the law: *May v. May*, 33 Bea. 81; and see *Childers v. Childers*, 1 D. & J. 482; *Groves v. Groves*, 3 Y. & J. 163. Purchase to secure a vote to the son.

Property transferred by a husband into the name of his wife raises a presumption that it is intended as a gift, subject to such marital control as he may exercise. Transfer into names of husband and wife.

Survivorship.

If he invests in the names of himself and his wife jointly it is an advancement to her only if she survive, and if she dies it reverts to him as surviving joint tenant: *Dummer v. Pitcher*, 2 M. & K. 262; *Talbot v. Cody*, I. R. 10 Eq. 146; *Re Eykyn*, 6 Ch. D. 115.

Addition of stranger's name.

The fact that a stranger's name is added makes no difference: *Re Eykyn, supra*.

Intention to benefit wife rebutted.

But if a trust for another be expressed by him at the time, though not declared on account of the banker's objection to notice it, the husband's acquiescence in leaving the property in the joint names of himself and his wife, does not create an advancement for her: *Smith v. Warde*, 15 Sim. 56.

Transfer of bank account for convenience.

So also a mere transfer of his banking account into the joint names for convenience, as if he is in failing health, does not constitute an advancement: *Marshal v. Crutwell*, 20 Eq. 328; but see *Batstone v. Salter*, 19 Eq. 250, 10 Ch. 431; *Lloyd v. Pughe*, 8 Ch. 88.

Payment to her account.

Nor does payment by the husband to the wife's account: *Lloyd v. Pughe*, 8 Ch. 88.

To trustees only without notice to them.

Where the husband invests funds in the names of the trustees of his settlement, but does not give them notice of it, such funds will be held to be an augmentation of the trust property: *Re Curteis*, 14 Eq. 217; but see *Re Eykyn, supra*.

Election, where husband passes same stock by will.

Where the husband, after a purchase of stock in the joint names of himself and his wife, makes a will, it must clearly appear from it that he intended to pass the same stock in order to raise a case of election against the wife: *Dummer v. Pitcher*, 2 M. & K. 262.

Deceased wife's sister.

In the case of a deceased wife's sister with whom the donor has gone through the ceremony of marriage, or a mistress, the case of advancement fails: *Soar v. Foster*, 4 K. & J. 152; and see *Rider v. Kidder*, 10 Ves. 360.

Investment by mother in child's name.  
Joining

A widow investing in the joint names of herself and her child is taken to intend an advancement: *Sayre v. Hughes*, 5 Eq. 376.

And a transfer including the daughter and her husband

does not rebut the presumption of advancement, as it is unlikely that the husband would be joined if no benefit was intended for the daughter: *Batstone v. Salter*, 19 Eq. 250, 10 Ch. 431. husband of daughter.

But it is otherwise where the mother is living apart from her husband: *Re De Visme*, 2 D. J. & S. 17. Mother living apart.

Where the son acts as the solicitor of the parent the onus is thrown upon him to prove that a trust was not intended: *Garrett v. Wilkinson*, 2 D. G. & S. 244. Son in a fiduciary relation to parent.

A purchase in the name of another towards whom the purchaser places himself *in loco parentis* is *prima facie* an advancement: *Ebrand v. Dancer*, 1 Coll. 265, n.; *Currant v. Jago*, *ibid.* 261; *Forrest v. Forrest*, 13 W. R. 380; and see *Kilpin v. Kilpin*, 1 M. & K. 542. Purchaser in loco parentis.

As to the circumstances and evidence to shew an intention to adopt a child, see *Powys v. Mansfield*, 3 M. & Cr. 359; *Pym v. Lockyer*, 5 M. & Cr. 29; *Rogers v. Soutten*, 2 Keen, 598; *Fowkes v. Pascoe*, 10 Ch. 343. Who is in loco parentis.

A person may be *in loco parentis* to, and advance his brother by a purchase in his name: *Forrest v. Forrest*, *supra*. Purchase in name of a brother.

Or grandchildren after the death of the father: *Ebrand v. Dancer*, *supra*; *Swallow v. Binns*, 1 K. & J. 417. Grand-children.

Or a nephew or niece: *Currant v. Jago*, *supra*; *Beecher v. Major*, 2 Dr. & Sm. 431; aff. 13 W. R. 853. Nephews and nieces.

Illegitimate children may take beneficially under the rule if there have been a recognition and filial treatment: *Kilpin v. Kilpin*, 1 M. & K. 542; *Beckford v. Beckford*, Lofft, 490; but see *Tucker v. Burrow*, 2 H. & M. 515. Natural children.

If a trust is intended it is advisable that such intention be embodied in some instrument at the time: *Grey v. Grey*, 2 Swans. 594. Intention to advance should be evidenced by writing.

The evidence admissible to prove a trust must consist of acts and declarations of the parent antecedent to, or contemporaneous with, the purchase, as subsequent acts or declarations will not be taken into account: *Murless v. Franklin*, 1 Swans. 13; *Redington v. Redington*, 3 Ridg. 194; *Sidmouth v. Sidmouth*, 2 Bea. 447; *Dumper v.* Evidence of a trust must be antecedent or contemporaneous.

*Dumper*, 3 Giff. 583; *Nicholson v. Mulligan*, 1 R. 3 Eq. 317; *Christy v. Courtenay*, 13 Bea. 96; *Devoy v. Devoy*, 3 Sm. & G. 403; *Forrest v. Forrest*, 13 W. R. 381; *Jeans v. Cooke*, 24 Bea. 513; *Williams v. Williams*, 32 Bea. 370.

**Letter.** Where the intention to advance is expressed by a letter of even date with the purchase, it is not rebutted by a power of attorney to the father to sell, but operates like a voluntary settlement with a power of revocation: *Beecher v. Major*, 2 Dr. & Sm. 431.

**After death of father and son.** If both father and son are dead, only declarations against interest by either are admissible: *Stock v. McAvoy*, 15 Eq. 55.

**Evidence of nominees received.** The evidence of the person claiming the benefit will be admitted in the action, and be weighed according to the ordinary rules as to interested witnesses: *Nicholson v. Mulligan*, 1 R. 3 Eq. 308; *Fowkes v. Pascoe*, 10 Ch. 343.

**Subsequent will.** A will devising a property purchased in the name of a son and made after it, will not alter the presumption of advancement: *Dyer v. Dyer*, 2 Cox, 92; *Williams v. Williams*, 32 Bea. 370.

**Prior will.** But a prior will giving a benefit to the donee is evidence in his favour: *Deacon v. Colquhoun*, 2 Drew. 21.

**Reservation of life interest.** A proved intention of the father to reserve a life interest, or to give a mere interest contingent on surviving him, is a circumstance which may rebut the gift: *Smith v. Warde*, 15 Sim. 56; *Forrest v. Forrest*, 13 W. R. 380; *Dumper v. Dumper*, 3 Giff. 583.

**Surrender to use of will.** A surrender by the father to the uses of his will repels the theory of advancement: *Prankerd v. Prankerd*, 1 S. & S. 1; but see *Beecher v. Major*, 2 Dr. & Sm. 431.

**Mortgage or lease by father.** Where the father mortgages or leases after the purchase, that will not avail against the son's title: *Back v. Andrew*, 2 Vern. 120; *Murless v. Franklin*, 1 Swans. 13.

### *Resulting Trust arising from Purchases Effected in the Name of Strangers.*

**Purchase of real estate in** "The trust of a legal estate, whether freehold, copyhold or leasehold; whether taken in the names of the pur-



chasers and others jointly, or in the names of others without that of the purchaser ; whether in one name or several ; whether jointly or successivè—results to the man who advances the purchase-money ;” unless such resulting trust be rebutted by evidence : *Redington v. Redington*, 3 Ridg. P. C. 178 ; *Dyer v. Dyer*, 2 Cox, 92 ; *Withers v. Withers*, Amb. 151, n. ; *Smith v. Baker*, 1 Atk. 385.

another's name, raises a resulting trust : Its rebuttal by evidence.

Personal property is also subject to the rule : *Sidmouth v. Sidmouth*, 2 Bea. 454 ; *Garrick v. Taylor*, 29 Bea. 79 ; aff. 7 Jur. N. S. 1174 ; *Beecher v. Major*, 2 Dr. & Sm. 431.

The same as to personality.

If the object of making the purchase in the name of another be illegal or prohibited by statute, a trust will not result : *Exp. Houghton v. Houghton*, 17 Ves. 251 ; *Redington v. Redington*, *supra* ; *Camden v. Anderson*, 5 T. R. 709 ; *Groves v. Groves*, 3 Y. & J. 163 ; but see *May v. May*, 33 Beav. 81 ; *Childers v. Childers*, 3 K. & J. 310 ; 1 D. & J. 482 ; and see *Holderness v. Lamport*, 29 Bea. 129 ; *Barton v. Muir*, L. R. 6 P. C. 134.

*Secus*, if object illegal.

The rule applies where the purchase-money is paid by several, and the conveyance taken in the name of a single nominee : *Wray v. Steele*, 2 V. & B. 388.

Purchase by several in name of one.

Though the nominee execute no declaration of trust, the resulting trust may be established against the nominal purchaser ; *Ryall v. Ryall*, 1 Atk. 59. If he allege a gift to him the onus is on him to prove that he from whom the consideration moved did not intend a trust for himself : *Redington v. Redington*, 3 Ridg. P. C. 178.

Absence of declaration of trust.

And in that case it cannot be proved after the death of the nominee, except by a declaration in his lifetime : *Lloyd v. Spillet*, 2 Atk. 150, n. ; *Ambrose v. Ambrose*, 1 P. W. 321 ; *Sugden*, V. & P. 701.

Proof of trust after nominee's or real purchaser's death.

And a trust may be proved though the consideration is stated to have been paid by the grantee, when in fact it was not : *Ryall v. Ryall*, 1 Atk. 59 ; *Willis v. Willis*, 2 Atk. 71 ; *Bartlett v. Pickersgill*, 1 Ed. 516 ; *Groves v. Groves*, 3 Y. & J. 163.

False statement of payment in deed.

The poverty of the nominee may be put in evidence to show that he could not have paid the purchase-money :

Evidence of grantee's poverty.

*Willis v. Willis*, 2 Atk. 71; *Ryall v. Ryall*, cited Amb. 412; and see *Lench v. Lench*, 10 Ves. 511.

Parol evidence to prove who paid,

Clear parol evidence *aliunde*, that the grantee did not pay the price, but that it was paid by another, is admissible: *Gascoigne v. Thwing*, 1 Vern. 366; *Willis v. Willis*, *supra*; *Smith v. Wilkinson*, cited 3 Ves. 705; and see *Garrick v. Taylor*, 29 Bea. 79; *Fowkes v. Pascoe*, 10 Ch. 348.

or of payor's intention.

And the intention of the payor at the time of the payment of the purchase-money may be proved in a similar manner: *Deacon v. Colquhoun*, 2 Dr. 21; *Groves v. Groves*, 3 Y. & J. 163, 172; and see cases in last paragraph.

Resulting rebutted by express trust.

Where there is a parol express trust of the purchase-money the resulting trust is rebutted: *Bellasis v. Compton*, 2 Vern. 294; *Lloyd v. Spillet*, 2 Atk. 150, n; *Rider v. Kidder*, 10 Ves. 360; *Ayerst v. Jenkins*, 16 Eq. 275.

Denial on oath of trust by nominee.

But the nominee's denial of it on oath, *e.g.*, in answer to interrogatories, cannot be met by parol evidence to the contrary: *Skett v. Whitmore*, 2 Free. 280; but see *Gascoigne v. Thwing*, *supra*; *Cooth v. Jackson*, 6 Ves. 39.

Rebuttal as to part of estate.

The trust may be rebutted as to part of the estate purchased: *Lloyd v. Spillet*, 2 Atk. 150; *Benbow v. Townsend*, 1 M. & K. 506; *Wray v. Steele*, 2 V. & B. 388.

Purchase made with borrowed money.

Where the purchase has been made with borrowed money, and without a declaration of trust, the lender will not be entitled to the benefit of a resulting trust: *Aveling v. Knipe*, 19 Ves. 445; *Re Cooke*, 6 Ir. Ch. R. 430, which Lord St. Leonards calls a very hard case, V. & P. 703; and see *Denton v. Davies*, 18 Ves. 499.

Purchase by and conveyance to agent in his own name.

An agent verbally appointed to buy, who pays the money and takes a conveyance to himself, is not a trustee for his principal: *Bartlett v. Pickersgill*, cited Burr. 2255; *Re Inskip*, 3 Giff. 359.

Absence of conveyance to agent in such case.

But this is not the case where there has been no conveyance to the agent: *Heard v. Pilley*, 4 Ch. 548, in which *Bartlett v. Pickersgill* was disapproved; and see *Re Inskip*, 3 Giff. 359; *Cave v. Mackenzie*, 46 L. J. Ch. 564; *Chattock v. Muller*, 8 Ch. D. 177.

Delay by the claimant under a resulting trust will deprive him of his right to enforce it: *Delane v. Delane*, 7 B. P. C. 279. Acquiescence.

*Resulting Trust arising from Joint Purchases.*

A conveyance or assignment to the purchasers jointly, at law creates a joint tenancy; but if the price be paid in unequal shares a tenancy in common is considered in equity to be created, and the survivor is a trustee for the others in proportion to the amount advanced by each of them: *Lake v. Gibson*, 1 Eq. Ca. Ab. 290, pl. 3, 1 W. & T. L. C. 198. Resulting trust upon a joint purchase.

The inequality in the sums advanced should appear in the deed itself, or at least in the original or some subsequent agreement, and be not merely a temporary arrangement at the time of the completion of the purchase: *Dart. V. & P. p. 924*, 5th ed. citing *Wood v. Birch*, *Sugd. V. & P. p. 700*; and *Aveling v. Knipe*, 19 Ves. 445; and see *Hill v. Hill*, 1 R. 8 Eq. 146. How inequality of shares of price should appear.

It seems that if one pays more than his share of the price, he can maintain an action for contribution against the co-owners: *Sugd. V. & P. 700*, where are found suggestions for assuring repayment; and see *Doe v. King*, 6 Exch. 791. So also if one co-owner takes an undue share of the rents: *Henderson v. Eason*, 17 Q. B. 701; 2 Ph. 308. Where one pays more than his share.

A joint mortgage, however, even if the money be advanced in equal shares, will result for the benefit of the executors of mortgagee who dies, according to his share of the debt: *Petty v. Styward*, 1 Ch. Rep. 31; *Robinson v. Preston*, 4 K. & J. 505; *Morley v. Bird*, 3 Ves. 631; *Vickers v. Cowell*, 1 Bea. 529; *Anon. Carth. 15*; *Matson v. Denis*, 12 W. R. 596. Joint mortgage.

An equity of redemption purchased in the same way by mortgagees, will be subject to the same rule: *Edwards v. Fashion*, Prec. Ch. 332; *Rigden v. Vallier*, 2 Ves. Sen. 258. Purchase of equity of redemption by joint mortgagees.

Circumstances may occur even where the price is paid, Trust may

be shown  
where  
money ad-  
vanced  
equally.

or the money advanced, in equal shares, to show that a tenancy in common with the resulting trust should arise: *Robinson v. Preston*, 4 K. & J. 505; *Morris v. Barrett*, 3 Y. & J. 384:—

As where the money arises from rents of lands held in common: *Ibid.*

Where the deed contains a declaration that the money invested is to be held by the purchasers as tenants in common: *Ibid.*; *Matson v. Denis*, *supra*.

Or where by will the parties treat their shares as several and not joint: *Robinson v. Preston*, *supra*; and see *Harrison v. Barton*, 1 J. & H. 287.

Lien and  
trust as to  
money  
spent by  
a joint  
owner in  
repairs, &c.

If one of the joint purchasers spends money in repairs or improvements, and dies, his estate has a lien on the land, and the others are trustees for him in respect thereof: *Lake v. Gibson*, *supra*; *Hamilton v. Denny*, 1 B. & B. 199.

What lien  
attaches to.

This lien is on the property, and not on the shares of the other co-owners: *Kay v. Johnston*, 21 Bea. 536.

Trust  
arising  
upon part-  
nership  
ventures.

In all cases of a joint undertaking or partnership either in trade or any other dealing, joint purchasers are considered as tenants in common, or the survivors as trustees for those who are dead: *Lake v. Gibson*, *supra*; *Lake v. Craddock*, 9 Ves. 597; *Jeffereys v. Small*, 1 Vern. 217; *Elliot v. Brown*, 3 Swans. 489; *Lyster v. Dolland*, 1 Ves. Jun. 431; *Jackson v. Jackson*, 9 Ves. 596; *Dale v. Hamilton*, 5 Hare, 369; *Clements v. Hall*, 2 D. & J. 173; and see Pollock, Digest of the Law of Partnership, Arts. 28, 29, 56; 1 Lindley, 687, *et seq.*

Reason of  
the sale.

The rule is founded on the principle that on the dissolution of the partnership all the property belonging to the partnership shall be sold, and the proceeds of the sale, after discharging the debts, shall be divided among the partners according to their respective shares: *Darby v. Darby*, 3 Drew. 495.

Where sale  
contem-  
plated by  
articles.

Thus if a sale is contemplated by the articles, real property is converted for all purposes, and the heir is ousted: *Ibid.*; *Crawshay v. Maule*, 1 Swans. 508; *Houghton v.*

*Houghton*, 11 Sim. 491 ; *Will v. Milne*, 26 Bea. 504 ; *Bank of England Case*, 3 D. F. & J. 645 ; *Forbes v. Steven*, 10 Eq. 178 ; *Waterer v. Waterer*, 15 Eq. 402.

But if a married woman be one of the co-owners and her share of the land and accretions are settled from time to time by deeds not contemplating a sale, there will be no conversion : *Steward v. Blakeway*, 4 Ch. 609.

Sale not contemplated.

The right of the survivor may be rebutted by evidence of acts such as occurred in *Robinson v. Preston*, 4 K. & J. 505 ; *Morris v. Barrett*, 3 Y. & J. 384, see above ; and see *Bank of England Case*, 3 D. F. & J. 645.

Evidence to rebut survivorship.

See further on the effect of a joint purchase, other than the resulting trust which may arise from it, Sugd. V. & P. 697—701 ; Dart, V. & P. 923—929, and the notes to *Lake v. Gibson*, 1 W. & T. L. C. 198.

## CHAPTER XII.

### OF CONSTRUCTIVE TRUSTS.

Constructive trust :  
what it is.

A CONSTRUCTIVE trust is one raised by construction of equity, in a man who would otherwise, by the transactions hereinafter mentioned, obtain for himself an undue advantage at the expense of others. See Lewin, 95 n. (I); *Aberdeen Town Council v. Aberdeen University*, L. R. 2 App. Ca. 544.

Limits of  
constructive trust.

With regard to the limits of the constructive trust thus defined, it is to be observed that "strangers are not to be made constructive trustees merely because they act as the agents of trustees in transactions within their legal powers, transactions perhaps, of which a Court of Equity may disapprove, unless those agents receive or become chargeable with some part of the trust property, or unless they assist with knowledge in a dishonest and fraudulent design on the part of the trustees": *Barnes v. Addy*, 9 Ch. 251. See further on this point *infra*, and Index *sub tit.* "Agent."

Constructive trust  
after contract for  
sale.

The vendor of an estate is a constructive trustee for the purchaser from the moment a valid contract is entered into: *Lysaght v. Edwards*, 2 Ch. D. 510, 517, explaining *Wall v. Bright*, 1 J. & W. 494; and see *Hadley v. Bank of Scotland*, 3 D. J. & Sm. 70; *Rose v. Watson*, 10 H. L. C. 678; *McCreight v. Foster*, 5 Ch. 604; *Shaw v. Foster*, L. R. 5 H. L. 321; and see *Tasker v. Small*, 3 M. & Cr. 70.

Devise of  
estate sold,

An estate contracted to be sold will therefore pass

under a devise by the vendors of trust estates: *Lysaght v. Edwards*, 2 Ch. D. 499; see *ante*, p. 22; and see *Exp. Rabbidge*, 8 Ch. D. 367.

After a contract and before conveyance, the vendor as such constructive trustee for the purchaser, is trustee of the rents and increase, and liable for voluntary waste or deterioration of the estate: *Acland v. Gaisford*, 2 Mad. 32; *Wilson v. Clapham*, 1 J. & W. 38.

Liability of vendor after contract.

A landowner, if not absolutely entitled to the land, is not allowed to put into his pocket sums paid for the withdrawal of his opposition to a Railway Bill, and he is bound to hold them as a constructive trustee for the inheritance: *Pole v. Pole*, 2 Dr. & Sm. 420; *Shrewsbury v. N. Staffordshire Railway Co.*, 1 Eq. 593; and see as to moneys received by the tenant for life of a manor for enfranchisement of copyholds, *Re Wilson*, 2 J. & H. 619; 32 L. J. Ch. 193.

Constructive trust where undue profit by tenant for life.

### *Renewal of Leases by Trustees and others.*

Where a leasehold for lives or years is renewed by a trustee, or by a person having a limited interest in it, in his own name, the Court, on grounds of public policy, will not allow him to retain the benefit of the renewal for himself, but holds him to have obtained it as a trustee for those interested in the old lease: *Keech v. Sandford*, 1 W. & T. L. C. 44 (*Romford Market Case*); *Holt v. Holt*, 1 Ca. Ch. 191; *Rawe v. Chichester*, Amb. 715; *Fitzgibbon v. Scanlan*, 1 Dow, 261; *Eyre v. Dolphin*, 2 B. & B. 298; *Clegg v. Edmondson*, 8 D. M. & G. 787; *Bradford v. Brownjohn*, 3 Ch. 714.

Trustee or limited owner renewing is trustee for all parties interested.

### *By Trustees and Executors.*

The rule applies, though the lessor have refused to renew to the *cestui que trust*: *Keech v. Sandford*, *supra*.

Or, where the co-trustees have refused to join: *Blewett v. Millett*, 7 B. P. C. 367.

Renewal refused to c. q. t.

Co-trustees not joining.

Absence of fraud. And though the party renewing be guiltless of fraud :  
*Ibid.*

After collusive forfeiture. Or though by collusion with the lessor the trustee incurs a forfeiture and obtains a renewal; *Stratton v. Murphy*, 1 R. 1 Eq. 345; *Hughes v. Howard*, 25 Bea. 575; and see *Nesbitt v. Tredennick*, 1 B. & B. 29; *Lovatt v. Knipe*, 12 Ir. Eq. R. 124.

Renewal by executor *de son tort*. An executor *de son tort* cannot, by compelling the actual executors to surrender, obtain a renewal for himself: *Mulvany v. Dillon*, 1 B. & B. 409.

Nor will a person, who takes the management of an intestate's affairs under a power of attorney from the mother of an infant next of kin, be allowed to hold a lease renewed in his own name: *Griffin v. Griffin*, 1 Sch. & L. 352; *Mulhallen v. Marum*, 3 Dr. & W. 317.

By administrator. Nor will an administrator be allowed to retain the benefit of such a renewal: *Kelly v. Kelly*, 1 R. 8 Eq. 403.

Executor of overholding lessee. An executor obtaining a new lease of lands, of which the testator was overholding tenant from year to year, cannot hold such new lease for himself: *James v. Dean*, 11 Ves. 383; 15 Ves. 236; *Archbold v. Scully*, 9 H. L. C. 360.

Executor of tenant at will or by sufferance. If the testator in that case had been merely tenant at will or by sufferance, when his tenancy would cease by his death, the executor renewing would probably be a trustee only for the residuary legatee: *James v. Dean*, 11 Ves. 393.

Expired lease. The rule applies though the lease have nearly expired: *Randall v. Russell*, 3 Mer. 196; *James v. Dean*, *supra*.

Renewal before expiry. Or, if the new lease is granted before the old one has expired: *Rakestraw v. Brewer*, 2 P. W. 511; *Taster v. Marriott*, Amb. 668; *Owen v. Williams*, *ibid.* 734.

Renewal including additional lands. Or, if it contain additional lands—the trust attaching, however, only to the original lands, if distinguishable: *Giddings v. Giddings*, 3 Russ. 241, 257; *Acheson v. Fair*, 2 C. & L. 203. See *Aberdeen Town Council v. Aberdeen University*, L. R. 2 App. Ca. 544.

Identity of term and rent. And the identity of term and rent is unimportant: *James v. Dean*, 11 Ves. 383; *Mulvany v. Dillon*, *supra*,



*By Tenant for Life.*

[See the cases in the note to *Keech v. Sandford*, 1 W. & T. L. C. 46; and to *Taster v. Marriott*, Amb. 668.]

A settlor, having reserved a life estate, cannot avoid the settlement by substituting a new lease for that in settlement: *Pickering v. Vowles*, 1 B. C. C. 197; *Mill v. Hill*, 3 H. L. C. 828.

Nor is a renewal an exercise by him of a general power of appointment: *Brookman v. Hales*, 2 V. & B. 45.

If a tenant for life of leaseholds for lives who is under no obligation to renew, take a renewal in his own name, the grant of reversionary leases to him is subject to the settlement: *Tanner v. Elworthy*, 4 Bea. 487; and see *Waters v. Bailey*, 2 Y. & C. C. C. 219.

It should be observed that a tenant for life is not obliged to renew, unless the nature of the estate and the terms of the will compel him: *Nightingale v. Lawson*, 1 B. C. C. 440; *Stone v. Theed*, 2 B. C. C. 243. [See the cases as to contribution to fines, &c., *infra*, p. 150 *et seq.*]

If the tenant for life sell the right of renewal, the money obtained must be held upon the trusts of the settlement: *Owen v. Williams*, Amb. 734.

If a tenant for life of leaseholds, held on a sub-lease, purchase the original lease and obtain a renewal, the renewed lease will be subject to the trusts, though he may have survived the expiration of the underlease: *Giddings v. Giddings*, 3 Russ. 241.

As the trust is a constructive and not an express trust in the tenant for life, the 25th sec. of the Statute of Limitations does not save the rights of the remaindermen: *Petre v. Petre*, 1 Dr. 371; *Re Dane*, I. R. 5 Eq. 499.

*By Mortgagees.*

The renewal by a mortgagee is subject to the old equity of redemption: *Luckin v. Rushworth*, 2 Ch. Rep. 59; *Rakestraw v. Brewer*, 2 P. W. 511.

By tenant for life :

Settlor reserving life estate.

Not exercise of power of appointment.

Reversionary lease granted to tenant for life.

Obligation to renew.

Moneys from sale of right to renew subject to trusts.

Tenant for life of sub-lease buying original lease.

Trust not an "express trust" within statute.

By mortgagees, subject to old equity of redemption.

Renewal  
by mort-  
gagor.

The mortgagee will have the benefit of a renewal by the mortgagor: *Smith v. Chichester*, 1 C. & L. 486; and see *Hughes v. Howard*, 25 Bea. 575; and *Nesbitt v. Tredennick*, 1 B. & B. 29.

### *By Joint Lessee.*

By joint  
lessee.

The renewal of a joint lease by one joint lessee enures for the benefit of the others: *Palmer v. Young*, 1 Vern. 276; *Hamilton v. Denny*, 1 B. & B. 199; *Jackson v. Welsh*, Ll. & G. (Plunk.) 346.

Infant  
joint  
lessee.

If one of them be an infant, any loss by the renewal must be borne by him who renews: *Exp. Grace*, 1 B. & P. 376.

### *By Partners.*

By part-  
ners.

Upon the same principle a partner renewing a lease of the partnership premises is a trustee for his partners: *Featherstonhaugh v. Fenwick*, 17 Ves. 298; *Clements v. Hall*, 2 D. & J. 186; *Clegg v. Edmondson*, 8 D. M. & G. 787.

Duration  
of partner-  
ship not  
important.

The duration of the partnership, even if it be at will only, does not affect the case: *Clegg v. Edmondson*, *ibid.* 806.

By manag-  
ing part-  
ner.

The rule would certainly not be departed from where the renewal is taken by a managing partner: *Ibid.* 807.

Notice to  
co-partners  
unneces-  
sary.

Nor, though notice of an intention to apply for a renewal was given to the other partners: *Ibid.*

Laches in  
case of  
mining  
partner-  
ship.

In the case of mining property, which is of fluctuating value, the application of the rule would depend upon the speedy enforcement of the trust: *Ibid.* 814; *Clements v. Hall*, 2 D. & J. 187.

Acquies-  
cence in  
case of ig-  
norance.

Where the representative of a deceased partner was kept in ignorance of his rights, the Court would not test his acquiescence upon this principle: *Clements v. Hall*, *supra*.

Trust en-  
forced un-  
til partner-  
ship wound  
up.

And the claim to the benefit of the renewal may be made so long as the duty of winding up the partnership remains unfulfilled: *Clegg v. Fishwick*, 1 McN. & G. 300; and see *Clements v. Hall*, 2 D. & J. 173.

A partner while negotiating for a lease bought the fee ; he was held to have taken the fee as a trustee for the partnership : *Gordon v. Scott*, 12 Moo. P. C. 1. Partner buying fee.

And a partner must share a premium for taking a lease with his co-partners : *Fawcett v. Whitehouse*, 1 R. & M. 132. Partner taking premium.

### *Generally.*

A devisee, or assignee with notice, of a leasehold on which debts, legacies, annuities, or other incumbrances, are charged, must hold a renewed lease for the persons interested in those charges, who will not be liable to contribute to the expense of renewal : *Winslow v. Tighe*, 2 B. & B. 196 ; *Stubbs v. Roth*, *Ibid.* 548 ; *Jones v. Kearney*, 1 Dr. & War. 134, 1 C. & L. 34 ; *Lombard v. Hickson*, 13 I. Ch. R. 98 ; *Stone v. Theed*, 2 B. C. C. 243 ; *Maxwell v. Ashe*, 1 B. C. C. C. 444n ; *Moody v. Matthews*, 7 Ves. 174 ; *Webb v. Lugar*, 2 Y. & C. Ex. 247. Devisee or assignee with notice of charges.

That a purchaser with notice of the constructive trust will be liable to it, see *Walley v. Walley*, 1 Vern. 484 ; *Parker v. Brooke*, 9 Ves. 583 ; *Eyre v. Dolphin*, 2 B. & B. 290 ; *Lombard v. Hickson*, 13 I. Ch. R. 98 ; *Mill v. Hill*, 3 H. L. C. 828. Or purchaser with notice.

The rule seems not to apply to a renewal by a person entitled to the leaseholds under a limitation to himself and the heirs of his body : *Blake v. Blake*, 1 Cox, 266.

Or, in the case of a renewal granted to a stranger to the settlement : see *Lee v. Vernon*, 5 B. P. C. 10 ; *Nesbitt v. Tredennick*, 1 B. & B. 29. Renewal by one entitled, to himself and heirs of his body.  
To stranger to settlement.  
Equities.

And generally in such cases the lessee under the new lease takes subject to all the equities attaching to the old lease, whether it be granted to him or to another through whom he claims : *Edwards v. Lewis*, 3 Atk. 538.

But acquiescence may bar the remedy against the constructive trustee : *Norris v. Le Neve*, 3 Atk. 38 ; *Clegg v. Edmondson*, *supra* ; and the cases cited *supra* on this point as to partners. Acquiescence.

The decree to enforce the constructive trust will include a direction for assignment of the new lease on the original Decree to enforce constructive trust.

title, with an account as to mesne profits: *Giddings v. Giddings*, 3 Russ. 260.

Sub-leases since renewal. Rack rent leases *bonâ fide* granted since the renewal will stand: *Bowles v. Stewart*, 1 Sch. & L. 230.

Indemnity against covenants. The constructive trustee may have an indemnity against burdensome covenants in the new lease: *Keech v. Sandford*, 1 W. & T. L. C. 47; *Giddings v. Giddings*, *supra*.

Lien for expenses. Also, a lien on the estate for expenses of renewal and interest: *Lawrence v. Maggs*, 1 Eden, 455, n.; *Rawe v. Chichester*, Amb. 720; *Coppin v. Fernyhough*, 2 B. C. C. 291; *James v. Dean*, 11 Ves. 383, 396.

Charge for improvements. Also, a charge for improvements: *Holt v. Holt*, 1 Ca. Ch. 190; *Mill v. Hill*, 3 H. L. C. 869; even if made after action brought: *Walley v. Walley*, 1 Vern. 487.

Tenant for life *cestui que vie*. Where a tenant for life renews, in which case, if also a *cestui que vie*, he is not able to obtain any benefit from such renewal, he may charge the expenses upon the estate: *Verney v. Verney*, Amb. 88; and with interest: *Adderley v. Clavering*, 2 B. C. C. 659.

When fee purchased. A constructive trustee, who makes a renewal impossible by acquiring the fee, is bound to give effect to charges on the previously renewable leasehold: *Trumper v. Trumper*, 14 Eq. 310; aff. 8 Ch. 870.

The leasehold interest, if not merged, will be first resorted to: *Barnes v. Racster*, 1 Y. & C. C. C. 401; *Trumper v. Trumper*, 14 Eq. 315; 8 Ch. 870.

## CHAPTER XIII.

### SECRET TRUSTS.

A PERSON apparently taking property by devise or bequest from a testator, with the knowledge of the existence of another instrument, which he actually or impliedly undertakes to carry into effect, will be fixed as a trustee with the performance of such instructions and directions as are given in that other instrument. But this rule applies only where the Court is persuaded that there has been a fraudulent inducement held out on the part of the apparent beneficiary in order to lead the testator to confide to him the duty which he so undertook to perform; for the jurisdiction in such cases is founded on personal fraud, which must be proved in order to let in a document not executed in the proper testamentary form: *McCor-mick v. Grogan*, L. R. 4 H. L. 82; *Norris v. Frazer*, 15 Eq. 318, 330.

Promise by  
devisee to  
testator  
enforced

on ground  
of fraud.

The fraud in such cases consists in inducing the testator to leave property to a person to whom no gift would have been made in the absence of the promise to carry out the testator's intention: *Russell v. Jackson*, 10 Hare, 204.

Nature of  
the fraud.

Where, therefore, a devise is prevented by the undertaking of the heir, devisee, or legatee to do certain acts in favour of others, the apparent donee must discover whether the undertaking was given, *i.e.*, whether a secret trust was created, and then, on the ground of fraud, such trust will be enforced, notwithstanding the Statute of Frauds, or now the Wills Act, which has superseded the Statute of Frauds in this respect: *Thynn v. Thynn*, 1 Vern. 295; *Oldham v. Litchfield*, 2 Vern. 506; *Drakeford v. Wilkes*, 3 Atk.

Right to  
discovery  
of secret  
trust.

539; *Chamberlain v. Chamberlain*, 1 Ch. Ca. 256; *Reech v. Kennegal*, 1 Ves. Sen. 123; *Muckleston v. Brown*, 6 Ves. 69; *Stickland v. Aldridge*, 9 Ves. 519; *Dixon v. Olmius*, 1 Cox, 414; *Russell v. Jackson*, 10 Ha. 204; *Wallgrave v. Tebbs*, 2 K. & J. 313; *Tee v. Ferris*, *Ibid.* 357; *McCormick v. Grogan*, *supra*; *Rowbotham v. Dunnnett*, 8 Ch. D. 430.

**Parol evidence.** Besides the admission of the trustee, the trust may be substantiated by other parol evidence: *Edwards v. Pike*, 1 Ed. 267.

**Acceptance of trust by silence :** The silence of the donee when the communication of the testator was made to him, if proved, is a sufficient indication that he accepted the trust; *Tee v. Ferris*, 2 K. & J. 357; *Springett v. Jennings*, 10 Eq. 495.

**by conduct.** And an admission may be made out from the conduct of the donee; *McCormick v. Grogan*, *supra*.

**Not made out from document with will, not communicated.** The knowledge in the donee, which is necessary to fix him with the trust, must be obtained by him during the testator's lifetime; it is not permitted to prove a secret trust by means of a written document not communicated by the testator himself: *Wallgrave v. Tebbs*, 2 K. & J. 324; *Tee v. Ferris*, 2 K. & J. 367.

**nor from wish of testator.** A mere wish or expectation that the donee will perform some act which the testator, fearing that it might not be lawful to include the purpose in his will, has left untouched by such will, does not affect the donee with a trust: *Lomax v. Ripley*, 3 Sm. & G. 48; *Rowbotham v. Dunnnett*, 8 Ch. D. 430.

**Discretion in trustee.** But a discretion left in the person who undertakes the duty will, it seems, not be allowed to defeat the trust *in toto*: *Jones v. Nabbs*, 1 Eq. Ca. Abr. 405; *Kingsman v. Kingsman*, cited, *ibid.*; *Barrow v. Greenough*, 3 Ves. 151.

**Uncertainty as to property in trust.** The effect of there being any uncertainty as to the portion of the property which was intended to be bound by the trust, is to throw on the alleged trustees the onus of distinguishing that which was to be bound by the trust from that which they allege to be unaffected by it: *Russell v. Jackson*, 10 Ha. 214.

And if the object of the trust be legal, but not sufficiently defined by the testator in the communication of it to the trustee, an inquiry may be had to ascertain its precise character: *Ibid.* p. 215.

Indefinite object.

When it appears that the gift would not have been made to one of the donees but for the promise given by the other, it has been held that the fraud avoids the whole gift, upon the principle in *Huguenin v. Baseley* (14 Ves. 273), and that the gift to the person who remained ignorant of the gift till the death is not beneficial: *Russell v. Jackson*, 10 Ha. 212; *Carter v. Green*, 3 K. & J. 603; but see *Tee v. Ferris*, 2 K. & J. 367.

Ignorance of one of donees.

A distinction, however, with regard to this point is taken, in some of the cases, between gifts in common and in joint tenancy: *Burney v. Macdonald*, 15 Sim. 6; *Russell v. Jackson*, *supra*; *Moss v. Cooper*, 1 J. & H. 352; *Rowbotham v. Dunnnett*, 8 Ch. D. 437.

The trust cannot be made to extend beyond the property devised so as to affect the donee personally: *Rann v. Hughes*, cited in *Reech v. Kennegal*, 1 Ves. Sen. 125; but see *Barrow v. Greenough*, 3 Ves. 154.

Extends only to property devised.

Where the promise is given by a woman, her husband's marital right to the property will be affected by the trust: *Norris v. Frazer*, 15 Eq. 318.

Promise by *feme covert*.

### *Secret Charitable Trusts.*

There is even a stronger call upon the justice of the Court upon a bargain between the testator and those who are apparently to take under his will, which bargain is to defeat the policy of the law, to discover whether there is a secret trust for an invalid charitable purpose: *Muckles-ton v. Brown*, 6 Ves. 69.

Bargain to conceal trust for charity.

In such a case the heir may obtain the necessary discovery in an action for that purpose, in order to establish a resulting trust to act in his favour: *Ibid.*; *Stickland v. Aldridge*, 9 Ves. 516; see *Adlington v. Cann*, 3 Atk. 149, 151; *Wallgrave v. Tebbs*, 2 K. & J. 323.

Discovery by heir.

Fraud  
must be  
shown.

But it is necessary to make out a case of fraud in order to let in evidence that a charitable gift, void within the Mortmain Act, was intended—the fraud being constituted by the inducement of the donee to obtain the devise to himself upon a promise to devote the property to charitable purposes: *Adlington v. Cann*, *supra*; *Russell v. Jackson*, 10 Ha. 204; *Wallgrave v. Tebbs*, *supra*; *Lomax v. Ripley*, 3 Sm. & G. 48; *Jones v. Badley*, 3 Ch. 362.

Secret  
trust upon  
conveyance  
in Mort-  
main.

A secret trust reserving a life interest to the grantor of land for charitable purposes is bad and avoids the conveyance: *Fisher v. Brierley*, 29 L. J. Ch. 477; *Way v. East*, 2 Drew. 44; and see *Limbrey v. Gurr*, 6 Mad. 151; and *Attorney-General v. Munby*, 1 Mer. 327.

And a will devising lands, in the event of the grantor dying within the year (the period necessary to make a conveyance in Mortmain good), creates no trust in the devisee: *Springett v. Jennings*, 10 Eq. 495.

Title of  
trustee.

Where the secret charitable trust is established upon the ground of fraud, the title of the trustee is *dehors* the will, and though the charitable gift might be exempt from duty, he cannot claim such exemption: *Cullen v. Attorney-General for Ireland*, L. R. 1 H. L. 190.



## CHAPTER XIV.

### OF ILLEGAL TRUSTS.

THE Court will not enforce trusts which contravene public policy, or which infringe a statute or some rule of law.

Illegal trusts.

A trust of money to procure a peerage is void : *Kingston v. Pierepont*, 1 Vern. 5. As to trusts attempting to control the limitations of a peerage, see the *Buckhurst Peerage Case*, L. R. 2 App. Ca. 1.

To procure peerage.

All trusts which offend against public morals or religion are void : *Thornton v. Howe*, 31 Bea. 14.

Immoral trusts.

As to what will constitute an illegal trust as being against received religious doctrines, see *Attorney-General v. Pearson*, 3 Mer. 408.

Illegal on religious grounds.

A trust for future illegitimate children is invalid : *Blodwell v. Edwards*, Cro. Eliz. 509 ; *Hamilton v. Waring*, 2 Bli. 196, 209 ; *Medworth v. Pope*, 27 Bea. 71 ; *Occleston v. Fullalove*, 9 Ch. 147 ; *Hill v. Crook*, L. R. 6 H. L. 265 ; 3 Ch. D. 773 ; *Dorin v. Dorin*, L. R. 7 H. L. 568.

Trust for future bastards.

But not a trust by will for the after-born illegitimate children of the testator himself, for the will must speak from the death for this as for all other purposes : *Occleston v. Fullalove*, *supra* ; *Re Goodwin*, 17 Eq. 345.

Illegitimate children of testator.

Under other trusts, not contemplating or encouraging future cohabitation, illegitimate children may take either as *personæ designatæ* or under the name of "children," if no other children answer to that description : *Hill v. Crook*, L. R. 6 H. L. 265 ; *Dorin v. Dorin*, L. R. 7 H. L. 568.

When bastards may take.

Deeds providing for future separation are void, and all

Future separation.

trusts referable to the arrangement for separation will fall through : *Westmeath v. Westmeath*, 1 Dow & C. 519 ; *Proctor v. Robinson*, 35 Bea. 329, 15 W. R. 138 ; *H. v. W.*, 3 K. & J. 382 ; *Cartwright v. Cartwright*, 3 D. M. & G. 982 ; *Merryweather v. Jones*, 4 Giff. 509 ; cf. *Ruffles v. Alston*, 19 Eq. 539.

Separation  
to follow  
deed.

Unless the deed be followed by immediate separation, it becomes void, and cannot be supported as a voluntary settlement : *Bindley v. Mulloney*, 7 Eq. 343.

Attempt to  
restrict  
absolute  
interests.

Any trusts having for their object to continue an interest in property after bankruptcy, or to restrain the power of alienation which is inherent in the right of property, are illegal : *Brandon v. Robinson*, 18 Ves. 429 ; *Graves v. Dolphin*, 1 Sim. 66 ; *Snowdon v. Dales*, 6 Sim. 524 ; *Piercy v. Roberts*, 1 M. & K. 4 ; *Rochford v. Hackman*, 9 Hare, 480 ; and see 2 Jarm. 14, *et seq.* ; *Shaw v. Ford*, 7 Ch. D. 674.

Upon a similar principle, a gift of land upon a condition subsequent not to sell without reinvesting in land, cannot prevent a sale not followed by such reinvestment : *Hood v. Oglander*, 34 Bea. 513.

Forfeiture  
on aliena-  
tion or  
bank-  
ruptcy.

Alienation voluntary or involuntary, *i.e.*, by bankruptcy, may be made to operate as a forfeiture by means of a trust determinable by acts of alienation or incumbrance by, or by the bankruptcy or liquidation of, the *cestui que trust*, with an express or implied gift over on the happening of any such event : see 2 Jarm. Wills, 28 ; 3 Dav. Prec. pt. I, 109, *et seq.* ; Theobald, p. 321.

As to trusts for the maintenance of a man after his bankruptcy, see *post*, p. 177.

Restric-  
tions be-  
yond 21.

Where a vested interest has once been given, restrictions upon its enjoyment beyond 21 are ineffectual unless there is a disposition of the intermediate interest : *Saunders v. Vautier*, Cr. & Ph. 240 ; *Rocke v. Rocke*, 9 Bea. 66 ; *Gosling v. Gosling*, Johns. 265.

Directory  
provisions.

Any such provision for postponement may be regarded as merely directory : *Josselyn v. Josselyn*, 9 Sim. 63 ; but see *Chambers v. Smith*, L. R. 3 App. Ca. 795.

Where shares of infant daughters were given upon trust "to be settled on themselves at their marriage," they were held entitled at 21, being then unmarried, there being no such trust as the Court could then execute: *Magrath v. Morehead*, 12 Eq. 491; and see *ante*, p. 50.

Shares of daughters "to be settled."

If a defendant wishes to set up an illegal motive for an absolute voluntary conveyance to him in an action to establish a trust against him, he must plead such defence definitely and in plain terms, for he cannot set up the Statute of Frauds to cover a fraud to which he was himself a party: *Haigh v. Kaye*, 7 Ch. 469; *Childers v. Childers*, 1 D. & J. 482; *Davies v. Otty*, 35 Bea. 208; see *ante*, p. 26.

Pleading illegality against a trust.

It is not enough for him simply to allege that the plaintiff, fearing an adverse decision in a pending litigation, conveyed the property to him: *Haigh v. Kaye*, *supra*.

Conveyance in fear of adverse decision.

Where the purpose of the illegal trust has failed the Court will assist in getting the property back, so that the illegal transaction shall not affect the rights of third parties: *Symes v. Hughes*, 9 Eq. 475.

Failure of illegal purpose.

Therefore, where a debtor conveyed to a trustee in order to defeat creditors and then became bankrupt, the Court decreed a reconveyance: *Ibid*.

Bankruptcy after deed to defeat creditors.

So where the deed is wholly inoperative as being executed under a mistake as to the state of the law, to evade which the conveyance was made, the Court would set it aside, as it did upon the acquittal of a prisoner who had made such a conveyance to avoid forfeiture (which had been abolished) in case of his conviction: *Manning v. Gill*, 13 Eq. 485; and see *Birch v. Blagrove*, Amb. 264; but see *Groves v. Groves*, 3 Y. & J. 175, in which Alexander, C. B., held, under the circumstances, that the illegality of the plaintiff's original purpose should prevent the Court from aiding him.

Trust created under mistake as to legal consequences.

As to trusts which infringe the rule against perpetuities, or which direct accumulations beyond the period allowed by the Thellusson Act, see *post*, 152 *et seq*.

Perpetuities.

Secret  
trusts.

Illegal  
charitable  
trusts.

As to secret trusts, see *ante*, pp. 79—82.

Trusts which are void as being constituted for superstitious purposes, or as being void for uncertain charitable purposes, or as contravening the Statute of Mortmain, usually arise, and generally depend as to the rules affecting them, upon the construction of wills, and are therefore not within the scope of the present work. The reader should on these subjects consult 1 Jarm. on Wills, Chap. ix., p. 189 *et seq.*; Theobald on Wills, pp. 181—199 *et seq.*; and the note to *Corbyn v. French*, Tudor, R. P. Cases, p. 456 *et seq.*; and on some points relating to the management of charities, Lewin on Trusts, Chap. xxi.

## CHAPTER XV.

### OF GETTING IN OF THE TRUST ESTATE BY THE TRUSTEES.

It is the duty of trustees, as soon as they have accepted the office, to call in and collect such parts of the estate as are not in a proper state of investment: *Styles v. Guy*, 1 Macn. & G. 431. Trustees to get in the trust estate.

Trustees are generally bound to invest balances in their hands in £3 per cents.: *Robinson v. Robinson*, 1 D. M. & G. 255; but see now 23 & 24 Vict. c. 145, s. 25, *post*, p. 133. Balances to be invested in consols.

They must not leave money outstanding on personal security, such as bills, bonds, or the like: *Lowson v. Copeland*, 2 B. C. C. 156; *Powell v. Evans*, 5 Ves. 838; *Caney v. Bond*, 6 Bea. 486; *Byrne v. Norcott*, 13 Bea. 336; *Waring v. Waring*, 3 Ir. Ch. R. 331. Personal securities to be got in.

They should, if acting under a marriage settlement, obtain the immediate transfer of the fund: *McGachen v. Dew*, 15 Bea. 84. Settlement funds to be vested in them.

If they neglect to enforce a covenant in a marriage settlement to transfer to them the wife's fortune, or to sue on a bond given by the husband to pay money, so that the fund is misapplied by the husband, or not received at all, they will be personally liable: *Fenwick v. Greenwell*, 10 Bea. 412; *Luther v. Bianconi*, 10 Ir. Ch. R. 194; *Wiles v. Gresham*, 2 Drew. 258; *Jones v. Higgins*, 2 Eq. 538. Effect of non-transfer of settlement funds.

The husband's estate may also be made liable in such a case, as he becomes a trustee of the fund: *Coxwell v. Franklinski*, 11 L. T. N. S. 153; *Spickernell v. Hotham*, Liability of husband for mis-application.

Kay, 669; *Butler v. Carter*, 5 Eq. 276; *Brittlebank v. Goodwin*, 5 Eq. 545; *Stone v. Stone*, 5 Ch. 74.

As to the effect of the Statute of Limitations in such cases, see *post*, Chap. XXXIX.

Liability of trustees to get in "with all convenient speed;"

Latitude given by the testator by such words as "to get in with all convenient speed," is no ground for infringing the rule as to personal security: *Bullock v. Wheatley*, 1 Coll. 130; *Buxton v. Buxton*, 1 M. & Cr. 93; *Grove v. Price*, 26 Bea. 103.

or with a power to vary;

As to a discretion to vary securities, and its effect upon the duty of getting in such securities, see *Prendergast v. Lushington*, 5 Ha. 171; *Robinson v. Robinson*, 1 D. M. & G. 262; *Bethell v. Abraham*, 17 Eq. 27.

or to call in a debt or not;

If a discretion is expressly given to trustees to call in a debt or not, they ought not to do so if they are not clearly of opinion that it is expedient: *Paddon v. Richardson*, 7 D. M. & G. 564, 583.

or to take "sufficient" security for advances. Suing for instalments.

A power to trustees to advance to a husband on sufficient security does not authorise them to take his bond only: *Mills v. Osborne*, 7 Sim. 30.

Nor if he covenant to pay by instalments, should they abstain from suing him, unless they are otherwise sufficiently secured: *Caffrey v. Darby*, 6 Ves. 488.

No liability for not compromising.

It seems that trustees are not bound to compromise a debt due on a bill, or liable if they afterwards sue and recover nothing: *Exp. Ogle*, 8 Ch. 711.

Should sue unless success unlikely.

But if it cannot be proved by the trustees that nothing would be recovered in an action, they are liable for their neglect in not suing in time: *East v. East*, 5 Ha. 348; *Simes v. Eyre*, 6 Ha. 137; *Clack v. Holland*, 19 Bea. 271; *Grove v. Price*, 26 Bea. 103; *Hobday v. Peters*, 28 Bea. 603.

Though debtor's credit hurt by suing.

Possible injury to the credit of the debtor on a bond is no reason for not suing him: *Luther v. Bianconi*, 10 Ir. Ch. R. 194.

Non-existence of fund on which debts charged.

If it appears that a fund, out of which certain payments are by will directed to be made, cannot satisfy such payments, the liability for not getting in the supposed fund does not arise: *Rowley v. Adams*, 2 H. L. C. 725.

Where trustees act *bonâ fide*, they may make payments by way of releasing rights standing in the way of realising the estate, though of course their conduct may be afterwards liable to revision: *Blue v. Marshall*, 3 P. W. 381; *Wiles v. Gresham*, 5 D. M. & G. 770; *Forshaw v. Higginson*, 8 D. M. & G. 834.

Releasing rights to clear title.

Trustees are not liable where a policy is dropped through the bankruptcy of the person liable to keep it up, unless it is part of their duty to pay the premiums: *Hobday v. Peters*, 28 Bea. 603.

Liability on dropped policy to secure debt;

But if in consequence of their neglect to give notice, the fund due on the policy has got into the wrong hands, they cannot excuse themselves on the ground of the insolvency of the person bound to pay the premiums: *Kingdon v. Castleman*, W. N. 1877, 15.

where trustees omit to give notice,

So also if they neglect a necessary registration; *Macnamara v. Carey*, Ir. R. 1 Eq. 9; *Lester v. Lester*, 6 I. Ch. R. 513.

or to register.

If trustees sign a receipt for money which they do not actually receive, they will be liable for it, on the ground that they had not properly secured it: *Westmoreland v. Holland*, W. N. 1871, 124.

Signing receipt for money un-received.

Trustees, like executors, are allowed a discretion as to the time when they shall sell securities: *Buxton v. Buxton*, 1 M. & Cr. 80; *Hughes v. Empson*, 22 Bea. 183; *Marsden v. Kent*, 5 Ch. D. 598.

Discretion as to time of realisation.

The onus is on them to show why they should not have converted within the usual period of one year, especially when there remains a liability on shares: *Grayburn v. Clarkson*, 3 Ch. 605; *Sculthorpe v. Tipper*, 13 Eq. 232.

They should sell within the year.

A direction to convert with all convenient speed, or the like, is not available to excuse excessive delay: see *supra*; and *Sculthorpe v. Tipper*, *supra*.

Excessive delay.

But where the settlor points out a time at which the trust is to commence, they are not debarred from anticipating that time in receiving the fund: *Mills v. Osborne*, 7 Sim. 30; *Maskelyne v. Russell*, W. N. 1869, 184.

Receipt before time prescribed by testator.

Trustees of residuary estate would probably be allowed

Continuing trade.

to carry on a business in order to its liquidation: *Kirkman v. Booth*, 11 Bea. 273; *Collinson v. Lister*, 20 Bea. 356.

If an executor undertakes a trust to continue the trade of his testator he becomes liable to the extent of all his own property, and he may be sued or proceeded against in bankruptcy though he is only a trustee; *Exp. Garland*, 10 Ves. 110, 118; *Cutbush v. Cutbush*, 1 Bea. 184; *Lucas v. Williams*, 4 D. F. & J. 436; *Owen v. Delamere*, 15 Eq. 139.

And if the power to trade be restricted to a specific portion of the assets, the remainder of the estate will not be liable in the bankruptcy to the debts: *Exp. Garland*, 10 Ves. 110, 118; *Cutbush v. Cutbush*, 1 Bea. 184; *Thompson v. Andrews*, 1 M. & K. 116; *Owen v. Delamere*, 15 Eq. 139; and see *Exp. Richardson*, Buck, 209, 3 Madd. 138; *Exp. Butterfield*, 1 De G. 319, 570.

The estate of the testator is bound to indemnify the trustee so carrying on the trade: Lewin, p. 209; but see *Lucas v. Williams*, 4 D. F. & J. 440.

Sale of  
good-will.

As to the sale of the good-will to one rather than to another purchaser at the request of beneficiaries, see *Selby v. Bowie*, 4 Gif. 300.

Breaking  
up estab-  
lishment.

As to the time allowed for discharging servants, &c., see *Field v. Peckett*, 29 Bea. 576.

Calling in  
mortgages.

A good mortgage security should not be called in until the money is required, or there is reason to believe it will fail, or because it is for the benefit of all that it should be called in: *Hall v. Hallett*, 1 Cox, 134; *Howe v. Dartmouth*, 7 Ves. 150; *Orr v. Newton*, 2 Cox, 277; *Ames v. Parkinson*, 7 Bea. 379, 383; *Robinson v. Robinson*, 1 D. M. & G. 263.

Calling in  
without  
consent of  
tenant for  
life.

If the security be found deficient, though the tenant for life refuse the required consent, the trustees should insist in calling in so much as is not covered by the security: *Harrison v. Thexton*, 4 Jur. N. S. 550; see *Thornton v. Hawley*, 10 Ves. 137.

Calling in  
equitable  
debt.

Where payment of the debt is enforceable in equity only, so that the *cestui que trust* might have enforced it



himself, the trustee will not be liable for not calling it in : *Paddon v. Richardson*, 7 D. M. & G. 563 ; but see *Horton v. Brocklehurst*, 29 Bea. 504.

In getting in the estate trustees can give receipts for money under 22 & 23 Vict. c. 35, s. 23, or under 23 & 24 Vict. c. 145, ss. 29 & 34. See also p. 124, *post*.

As to a supposed difference between the power to give receipts for personal debts and for money arising out of real estate, see Lewin, pp. 258—9, and the Irish cases there cited.

Receipts  
under 22 &  
23 Vict.  
c. 35, and  
23 & 24  
Vict. c.  
145.  
Personal  
debts and  
debts  
charged on  
land.

### *Getting in Wasting Securities.*

Where an entire personal residue is given in trust to persons in succession, wasting securities, *e.g.*, leaseholds or terminable annuities, included in it, must be converted by the trustees into investments of a permanent character : *Howe v. Dartmouth*, 7 Ves. 137, and the older cases there cited : *House v. Way*, 12 Jur. 959 ; *Craig v. Wheeler*, 29 L. J. Ch. 374 ; *Morgan v. Morgan*, 14 Bea. 72 ; *Pickering v. Pickering*, 4 M. & Cr. 289 ; *Re Shaw*, 12 Eq. 124 ; *Tickner v. Old*, 18 Eq. 422 ; *Thursby v. Thursby*, 19 Eq. 408 ; *Porter v. Baddeley*, 5 Ch. D. 542 ; *Macdonald v. Irvine*, 8 Ch. D. 101.

Getting in  
wasting  
securities,

And this rule is extended to the case of securities which would not be sanctioned by the Court : *Thornton v. Ellis*, 15 Bea. 193 ; *Wightwick v. Lord*, 6 H. L. C. 217.

or secu-  
rities not  
sanctioned  
by Court.

As to the nature of such unauthorised securities, see Chap. XVIII.

But an indication in the will that the tenant for life should take the whole income of the property as it stands is effectual to exclude this rule : *Pickering v. Pickering*, 4 M. & Cr. 299 ; *Thursby v. Thursby*, 19 Eq. 408, and the cases cited ; but see *Macdonald v. Irvine*, 8 Ch. D. 101.

Contrary  
intention.

The onus of showing that no conversion is intended is on those who say that it is not : *Morgan v. Morgan*, 14 Bea. 72 ; *Blann v. Bell*, 2 D. M. & G. 779.

Burden of  
proof.

Neglect to observe these rules will render the trustees liable as for a breach of trust, though they may recover

Overpay-  
ment to

tenant for life. the overpayment from the estate of the tenant for life : *Hood v. Clapham*, 19 Bea. 91 ; *Bate v. Hooper*, 5 D. M. & G. 338 ; *Tickner v. Old*, 18 Eq. 422.

As to the apportionment of a sum so recovered if less than what is due, see *Re Grabowski*, 6 Eq. 12 ; *Cox v. Cox*, 8 Eq. 343 ; *Ackroyd v. Ackroyd*, 18 Eq. 313.

Specific gift : no conversion. If leaseholds or unauthorised securities are given specifically, no duty of conversion is implied : *Vincent v. Newcombe*, Younge, 599 ; *Cafe v. Bent*, 5 Ha. 34.

General gift after details of estate : no conversion. And an indication against conversion is gathered from a general gift of leaseholds followed by such words as "all other, &c., wheresoever situate, &c.," though there be in the will a discretionary power of sale : *Lord v. Godfrey*, 4 Madd. 455 ; *Bethune v. Kennedy*, 1 M. & Cr. 114 ; *Pickering v. Pickering*, 4 M. & Cr. 289 ; *Vaughan v. Buck*, 1 Ph. 75 ; *Bowden v. Bowden*, 17 Sim. 65 ; *Hinves v. Hinves*, 3 Ha. 609 ; *Vincent v. Newcombe*, Yo. 599 ; *Lichfield v. Baker*, 13 Bea. 447 ; *Hood v. Clapham*, 19 Bea. 90 ; *Simpson v. Lester*, 4 Jur. N. S. 1269 ; *Craig v. Wheeler*, 29 L. J. Ch. 374 ; *Boys v. Boys*, 28 Bea. 436 ; *Thursby v. Thursby*, 19 Eq. 395. *Mills v. Mills*, 7 Sim. 501, is not law. See Lewin, 264 n. (b).

Contrary intention from words : "rents : " The use of the word "rents" tends to show an intention that the leaseholds are to be taken specifically : *Goodenough v. Tremamondo*, 2 Bea. 512 ; *Bowden v. Bowden*, 17 Sim. 65 ; *Cafe v. Bent*, 5 Ha. 36 ; *Burton v. Mount*, 2 De G. & Sm. 383 ; *Blann v. Bell*, 2 D. M. & G. 775 ; *Skirving v. Williams*, 24 Bea. 275 ; *Vachell v. Roberts*, 32 Bea. 140.

"dividends : " Or, "dividends : " *Alcock v. Sloper*, 2 M. & K. 699 ; *Sutherland v. Cooke*, 1 Coll. 500 ; *Pidgeon v. Spencer*, W. N., 1867, 87 ; but see *Pickup v. Atkinson*, 4 Ha. 624 ; *Booth v. Coulton*, 7 Jur. N. S. 207 ; *Bate v. Hooper*, 5 D. M. & G. 344 ; *Boys v. Boys*, 28 Bea. 436 ; *Wilday v. Sandys*, 7 Eq. 455.

"income : " Or, "income : " *Chambers v. Chambers*, 15 Sim. 183 ; *Hubbard v. Young*, 10 Bea. 205 ; *Crowe v. Crisford*, 17 Bea. 507.

Or, "profits:" *Miller v. Miller*, 13 Eq. 263.

"profits:"

Where the object of the gift is expressed to be the maintenance of the tenant for life and children, the Court does not order a conversion in all cases: *Marshall v. Bremner*, 2 Sm. & G. 237; *Wearing v. Wearing*, 23 Bea. 99.

Equal benefit of tenant for life and children.

Where an annuity was charged on Long Annuities, they were ordered to be sold: *Fryer v. Buttar*, 8 Sim. 442.

Charge on wasting property.

A leasing or selling power where specific leaseholds are given, followed by a general gift of residue without a power of sale, will not show an intention that a conversion should be made: *Cafe v. Bent*, 5 Ha. 34.

Power to sell or lease.

An inference against a conversion is to be drawn from the presence of a direction to convert: *Gibson v. Bott*, 7 Ves. 89; *Morgan v. Morgan*, 14 Bea. 72; *Johnson v. Johnson*, 2 Coll. 441; *Jebb v. Tugwell*, 20 Bea. 84; *Thursby v. Thursby*, 19 Eq. 408.

Direction to sell,

And from a direction to sell to pay debts: *Re Sewell*, 11 Eq. 80.

or to sell to pay debts.

And from a power to continue investments: *Tickner v. Old*, 18 Eq. 422; *Porter v. Baddeley*, 5 Ch. D. 542.

Power to continue investments.

And from a power to vary them: *Morgan v. Morgan*, 14 Bea. 72; *Re Llewellyn*, 29 Bea. 171; but see *Lord v. Godfrey*, 4 Madd. 455.

Power to vary.

A discretionary power of sale given to trustees does not interfere with the operation of the rule; *Caldecott v. Caldecott*, 1 Y. & C. C. C. 312; *Meyer v. Simonsen*, 5 De G. & Sm. 723; *Yates v. Yates*, 28 Bea. 637; *Re Llewellyn*, 29 Bea. 171; *Brown v. Gellatly*, 2 Ch. 751; *Re Sewell*, 11 Eq. 80.

Discretionary power of sale.

Nor will a trust to convert from time to time: *Caldecott v. Caldecott*, 1 Y. & C. C. C. 737.

To sell from time to time.

But if the sale be postponed by the testator till after the death of the tenant for life, the rule does not apply: *Pickering v. Pickering*, 4 M. & Cr. 289; *Vincent v. Newcombe*, Younge, 599; *Daniel v. Warren*, 2 Y. & C. C. 290; *Macdonald v. Irvine*, 8 Ch. D. 101, 117.

Direction to sell after life-tenant's death.

Nor if there be a direction to "divide" at the death of To "di-

vide " after his death. the life-tenant: *Collins v. Collins*, 2 M. & K. 703; *Rowe v. Rowe*, 29 Bea. 276.

Specific gift on his death. Nor if the wasting property, or part of it, be given specifically on his death: *Collins v. Collins*, *supra*; *D'Aglic v. Fryer*, 12 Sim. 1; *Harris v. Poyner*, 1 Drew. 174; *Holgate v. Jennings*, 24 Bea. 623.

Direction to convert part of residue. If after a direction to convert, the testator give the tenant for life the income of the part unsold, he will not be deprived of the income of that part in specie: *Johnston v. Moore*, 27 L. J. Ch. 453; *Wrey v. Smith*, 14 Sim. 202; *Miller v. Miller*, 13 Eq. 263.

Postpone-ment for definite time: If the sale be postponed for a definite time by the testator, the intermediate income goes to the tenant for life: *Green v. Britten*, 1 D. J. & Sm. 649; *Skirving v. Williams*, 24 Bea. 275; *Thursby v. Thursby*, 19 Eq. 395.

for in- definite time. But if for an indefinite time, and the earnings are to be for the benefit of the estate, he does not take them: *Brown v. Gellatly*, 2 Ch. 751; and see *Viner v. Vaughan*, 2 Bea. 466; *Daly v. Beckett*, 24 Bea. 114; *Miller v. Miller*, 13 Eq. 263.

Reference in will to difficulty of conversion. Where a testator referred to a specific leasehold house as likely to remain unconverted, the tenant for life was allowed to receive the whole rents: *Vaughan v. Buck*, 1 Ph. 75; and see *Macdonald v. Irvine*, 8 Ch. D. 118.

Residue invested in a partnership. Where part of the residue is invested in a partnership, and is to be repaid with interest, the tenant for life takes the interest in specie: *Fearn v. Young*, 9 Ves. 549; *Meyer v. Simonsen*, 5 De G. & Sm. 723; *Thornton v. Ellis*, 15 Bea. 193; *Re Llewellyn*, 29 Bea. 174.

Defect of title. And where from a defect in title it is for the benefit of all that a leasehold should not be sold, the tenant for life will take the whole rents: *Gibson v. Bott*, 7 Ves. 89; and see *Walker v. Shore*, 19 Ves. 387.

Direction to sell with consent of life tenant. If the tenant for life's consent is necessary to a sale, that shows an intention against the rule: *Hinves v. Hinves*, 3 Ha. 611; *Hind v. Selby*, 22 Bea. 373; *Skirving v. Williams*, 24 Bea. 275.

*Getting in a Reversion for the Life-Tenant's Benefit.* Reversions.

If part of a residue given to persons in succession consists of reversionary, future, or contingent interests, such interests should be converted so as to give the tenant for life an immediate income from them: *Howe v. Lord Dartmouth*, 7 Ves. 137; *Prendergast v. Prendergast*, 3 H. L. C. 218; *Wilkinson v. Duncan*, 23 Bea. 469; *Johnson v. Routh*, 27 L. J. Ch. 305; *Lord v. Wightwick*, 4 D. M. & G. 803; *Harrington v. Atherton*, 2 D. J. & Sm. 352.

Sale of reversionary or future interests.

If the reversion falls in before conversion, the tenant for life will still take the whole income of the value calculated after a year from the death of the testator: *Wilkinson v. Duncan*, 23 Bea. 469.

Where reversion falls in before sale.

The rule is the same though the reversion be expectant on the tenant for life's own life: *Johnson v. Routh*, 27 L. J. Ch. 308; *Harrington v. Atherton*, *supra*. In this case the value was ascertained from the testator's death: *Ibid*.

Reversion on life-tenant's own life.

*Adjustment of Rights in residue between Tenant for Life and Remainderman.*

Every tenant for life is entitled to the income of all such part of the residue as is not required for the payment of debts and which is found to be in a proper state of investment. He is entitled to the income of that property from the death of the testator: *Allhusen v. Whittell*, 4 Eq. 302, citing *Angerstein v. Martin*, T. & R. 232; *Hewitt v. Morris*, *ibid*. 241; and see *La Terrière v. Bulmer*, 2 Sim. 18; *Caldecott v. Caldecott*, 1 Y. & C. C. 312, 737.

Interest of life-tenant in proper investments.

Or from the time (even within the year) when a proper conversion has been made: *Gibson v. Bott*, 7 Ves. 89; *La Terrière v. Bulmer*, 2 Sim. 18.

But, in adjusting the rights between the parties, it is necessary to ascertain what part, together with the income of such part for a year, will be wanted for the pay-

Mode of adjustment.

ment of debts, legacies and other charges during the year, and the proper and necessary fund will be ascertained by including the income for one year which may arise upon the fund which may be so wanted: *Allhusen v. Whittell*, 4 Eq. 303.

Payment of debts before end of year.

This rule is not affected by the fact that the debts and legacies have been paid before the year, and that the income from the continuance of the estate in the business carried on by the testator has greatly exceeded 5 per cent., so that the income found as the result of the inquiry as coming to the tenant for life was much reduced: *Lambert v. Lambert*, 16 Eq. 320.

Cases where rate of interest unusually high.

And in general where the income arises from such sources, so that from the risk a higher rate than usual is obtained, the remaindermen are entitled to a portion of the extra income: *Dimes v. Scott*, 4 Russ. 195; but see *Stroud v. Gwyer*, 28 Bea. 130.

Rule in *Allhusen v. Whittell* to be applied to real estate.

The rule is applicable to real estate; and the tenant for life of land charged with debts must keep down all the interest on debts bearing interest and which are found to be a charge: *Marshall v. Crowther*, 2 Ch. D. 199; see *Barnes v. Bond*, 32 Bea. 653. *Greisley v. Chesterfield*, 13 Bea. 288, was not followed.

As to part not properly invested.

As to that part of the residue which is not in a proper state of investment at the death of the testator, the tenant for life should get the income from the death taken on a sum of Consols purchased on the death of the testator: *Dimes v. Scott*, 4 Russ. 195; *Taylor v. Clark*, 1 Ha. 161; *Morgan v. Morgan*, 14 Bea. 72; *Holgate v. Jennings*, 24 Bea. 623; *Allhusen v. Whittell*, *supra*; *Brown v. Gellatly*, 2 Ch. 752.

Investments legalised by 22 & 23 Vict. c. 35.

As regards investments authorised only by the statute (22 & 23 Vict. c. 35), it has been held that that Act is not made by 23 & 24 Vict. c. 38, s. 12, retrospective for the purpose of altering rights, and that the tenant for life could not have the whole income of such investments between the testator's death and the passing of the latter Act, but the income only of so much Consols as could have

been bought at the time of the death of the testator;  
*Hume v. Richardson*, 4 D. F. & J. 29.

It seems that if the property ought to be, but cannot be converted, or is an outstanding debt not immediately liable to be called in, the tenant for life takes 4 per cent. from the death on the value taken at the end of a year after it: *Gibson v. Bott*, 7 Ves. 89; *Caldecott v. Caldecott*, 1 Y. & C. C. C. 312; *Sutherland v. Cooke*, 1 Coll. 503; *Fearns v. Young*, 9 Ves. 549; *Meyer v. Simonsen*, 5 De G. & Sm. 723; *Re Llewellyn*, 29 Bea. 174.

If income of property is directed to be accumulated till an investment is found, the tenant for life takes the accumulations after a year from the death: *Sitwell v. Bernard*, 6 Ves. 520; *Noel v. Henley*, 7 Price, 241; *Vickers v. Scott*, 3 M. & K. 500; and see *Macpherson v. Macpherson*, 1 Mcq. 243; 16 Jur. 847.

The tenant for life is entitled to the income arising from so much of the residue as is set apart to pay contingent legacies: *Allhusen v. Whittell*, *supra*, following *Crawley v. Crawley*, 7 Sim. 427; *Fullerton v. Martin*, 1 Dr. & Sm. 31; *Cranley v. Dixon*, 23 Bea. 512.

Where property cannot be immediately converted.

Direction to accumulate: life-tenant's interest in accumulations.

Life-tenant entitled to income of fund for contingent legacies.

## CHAPTER XVI.

### OF THE LIABILITY OF TRUSTEES FOR THE SAFETY OF TRUST PROPERTY.

- Extent of liability.** THIS liability does not extend to cases of robbery or fraud, beyond the care which a prudent man would take of his own property: *Morley v. Morley*, 2 Ch. Ca. 2; *Jones v. Lewis*, 2 Ves. Sen. 240; *Exp. Belchier*, Amb. 218; and see *Bostock v. Floyer*, 1 Eq. 26.
- Executor is gratuitous bailee.** And it is held that an executor is a gratuitous bailee and not liable for loss, unless guilty of wilful default: *Job v. Job*, 6 Ch. D. 564.
- Paying into bank.** Trust money may be placed with a banker for a reasonable time if not immediately required for investment: *Swinfen v. Swinfen*, 29 Bea. 211; *Wilks v. Groom*, 3 Dr. 584.
- Excessive deposit.** But the amount must not be excessive: *Astbury v. Beasley*, W. N. 1869, 96.
- Reasonable duration of deposit.** A year after the testator's death is a reasonable time: *Moyle v. Moyle*, 2 R. & M. 710; *Johnson v. Newton*, 11 Ha. 160.
- After new trustees appointed.** Money must not be left at a banker's by a retiring trustee after new trustees have been appointed: *Lunham v. Blundell*, 27 L. J. Ch. 179.
- Panking money for future payments.** The trustee may pay money required for contingent or future bequests into a bank; and if it fails, the legatees already paid will not bear the loss, which must fall on those entitled to such bequests: *Fenwick v. Clarke*, 31 L. J. Ch. 728.
- After order to pay into Court.** Money ought not to be paid into a bank after an order to pay it into Court: *Wilkinson v. Bewick*, 4 Jur. N. S. 1010.



Trustees placing money at a banker's with an order to invest it, will be liable if the bank fails before the investment, unless they have taken care to have it completed at once: *Challen v. Shippam*, 4 Ha. 557; and see *Moyle v. Moyle*, 2 R. & M. 710; *Matthews v. Brise*, 6 Bea. 239.

Loss by  
laches of  
trustee.

They are liable also if they deposit the money at interest with a bank which fails; for that is merely an unwarranted investment: *Rehden v. Wesley*, 29 Bea. 213; but see *Re Marcon*, W. N. 1871, 148.

Deposit at  
interest.

Or on a banker's note bearing interest; *Darke v. Martyn*, 1 Bea. 525; *Bacon v. Clark*, 3 M. & Cr. 294; *Gibbins v. Taylor*, 22 Bea. 344.

On bank-  
er's note  
bearing  
interest.

They must not put money into a bank in such a way that other signatures than their own are necessary to get it out: *Salway v. Salway*, 2 R. & M. 215; 3 C. & F. 44.

Deposit so  
that sole  
control  
lost.

And a trustee is liable for loss if he deposits the money to his own personal account: *Massey v. Banner*, 1 J. & W. 248; *Wren v. Kirton*, 11 Ves. 377 (in which *Knight v. Plymouth*, 1 Dick. 120 is doubted); *Rowth v. Howell*, 3 Ves. 565 a.

Deposit to  
trustee's  
own ac-  
count.

But it is sufficient if the money be so ear-marked that it can be followed, in the event of a loss, as trust money: *Pennell v. Deffell*, 4 D. M. & G. 386; *Exp. Kingston*, 6 Ch. 632; *Great Eastern Railway Co. v. Turner*, 8 Ch. 153; see *Brown v. Adams*, 4 Ch. 767; *post*, p. 299.

How ear-  
marked.

And generally if trustees blend trust-money with their own it is for them to show what part of the mixed fund is not affected by the trust: *Warde v. Aeyre*, 2 Bulst. 323; *Fellows v. Mitchell*, 2 Vern. 516; *Chedworth v. Edwards*, 8 Ves. 46; *Lupton v. White*, 15 Ves. 432; *Pinkett v. Wright*, 2 Ha. 120; *Harford v. Lloyd*, 20 Bea. 310; *Pennell v. Deffell*, 4 D. M. & G. 372; *Mason v. Morley*, 34 Bea. 475; *Cook v. Addison*, 7 Eq. 466; *post*, p. 301 *et seq.*

Blending  
trust  
moneys  
with their  
own :

This principle applies where the blending of funds arises from not keeping accounts: *White v. Lincoln*, 8 Ves. 363; *Leeds v. Amherst*, 20 Bea. 239.

by not  
keeping  
accounts :

by destroying  
ing ac-  
counts.

Entrusting  
money to  
strangers.

Interim  
investment  
in Exche-  
quer bills.

Loss of de-  
posit by  
auction-  
eer's de-  
fault.  
Payment  
to agent  
before re-  
quired.

Misappli-  
cation by  
agent.

Safety of  
securities  
transfer-  
able by  
delivery ;

of shares  
registered  
in name of  
one trus-  
tee only.

Insurance  
of lease-  
holds.

Keeping up  
policy on  
life of a  
debtor.

Or from destroying accounts: *Gray v. Haig*, 20 Bea. 219 ; and see *Armory v. Delamirie*, 1 Strange, 505.

Of course trustees are liable if they entrust money to mere strangers who misapply it : *Clough v. Bond*, 3 M. & Cr. 490 ; *Johnson v. Newton*, 11 Hare, 160 ; *Browne v. Butter*, 24 Bea. 159.

And though an interim investment in Exchequer bills is allowed, the bills must not be left with a broker so that he can misapply them : *Matthews v. Brise*, 6 Bea. 239.

But a deposit may be left with an auctioneer, and the trustees will not be liable if they do all they can to recover it from him ; *Edmonds v. Peake*, 7 Bea. 239.

Money must not be paid to an agent before it is required : *Castle v. Warland*, 32 Bea. 660 ; and see *Shipbrook v. Hinchinbrook*, 16 Ves. 477.

But after a proper payment to an agent, trustees are not liable if he misapplies it : *Re Bird*, 16 Eq. 203 ; and see *Barnes v. Addy*, 9 Ch. 251.

As to the precautions which trustees of shares, payable to bearer, should take with regard to the safety of securities transferable by delivery, see *Mendes v. Guedalla*, 2 J. & H. 259 ; *Lewis v. Nobbs*, 8 Ch. D. 591.

And as to shares which the company requires to be registered in a single name, see *Consterdine v. Consterdine*, 31 Bea. 330.

Trustees are not personally liable upon a testator's covenant to insure leaseholds : *Fry v. Fry*, 27 Bea. 146 ; *Bailey v. Gould*, 4 Y. & C. 221 ; and see *Dobson v. Land*, 8 Ha. 216.

And a sum paid by them in satisfaction of such a covenant will be allowed in their accounts : *Fry v. Fry*, 27 Bea. 144.

They must not allow a policy on the life of a debtor to the estate to drop : *Garner v. Moore*, 3 Dr. 277.

## CHAPTER XVII.

### GENERAL DISCRETION AND POWERS OF TRUSTEES—POWER TO CONSENT TO MARRIAGE—POWER TO BUILD, &c.

In determining whether trustees have been warranted in acting in a particular manner in a state of circumstances *not contemplated by the trusts*, the Court will protect them, if it is shown that they have acted as sensible and prudent men, acting for the common benefit of all their *cestuis que trust*, might fairly have acted: *Angell v. Dawson*, 3 Y. & C. 308, 317; *Harrison v. Randall*, 9 Hare, 397, 407; *King v. King*, 1 D. & J. 671. General discretion.

What a trustee would be ordered by the Court to do is valid if done by him without the previous authority of the Court: *Andrews v. Partington*, 3 B. C. C. 60, 401; *Gilliland v. Crawford*, 1 R. 4 Eq. 42; *Seagram v. Knight*, 2 Ch. 628, 630. Doing what Court would have sanctioned.

So a trustee to pay debts may mortgage or sell to raise them, for the Court would have decreed it: *Bath v. Bradford*, 2 Ves. Sen. 586. Selling to pay debts.

Where trustees are acting *bonâ fide* in the exercise of their discretion, they may (though they run some risk in doing so) make payments which are in their judgment necessary for the due execution of their trust: *Forshaw v. Higginson*, 8 D. M. & G. 827; and see *Balsh v. Hyham*, 2 P. W. 453. Making necessary payments.

So trustees for sale were allowed a sum paid for a legacy alleged by a purchaser to be a charge, though it was doubtful if it was so: *Ibid.*

Trustees are justified in releasing arrears of rent in Compromise.

order to get rid of a troublesome tenant: *Blue v. Marshall*, 3 P. W. 381.

Paying capital of annuity.

A discretion to trustees to lay out a share of residue in the purchase of an annuity is properly exercised by the gift to the intended annuitant of sums arising from the share, for they would have been justified in paying over the whole to him: *Messeena v. Carr*, 9 Eq. 260.

Lien for payments out of pocket.

Where trustees, relying on the general principle that they are entitled to all expenses properly incurred out of the trust property, advance their own money for a necessary purpose, they may have a lien on the deeds, but not a sale or foreclosure: *Darke v. Williamson*, 25 Bea. 622; see *post*, p. 196 *et seq.*

Suit not desired by beneficiaries.

Trustees will have to pay the costs of a suit brought and continued by them in a case in which all parties being *sui juris*, they for no sufficient reason refuse to concur in acts which they have not satisfied themselves such parties would disapprove: *Bradby v. Whitchurch*, W. N. 1868, 81.

As to their liability to such costs in a like case, where one of the parties has lately come of age, see *King v. King*, 1 D. & J. 663.

Refusal to pay beneficiaries.

With regard to vexatious objections by trustees to pay over trust funds, see *post*, p. 232 *et seq.*

Consulting *cestui que trust* as to discretion.

If there is a discretion to be exercised under the trust, the trustee may apply to *cestui que trust* for his advice and assistance in the exercise of it, and if the *cestui que trust* refuse his aid, he may not afterwards be entitled to complain of what the trustee has done in the exercise of his own discretion: *Life Ass. of Scotland v. Siddal*, 3 D. F. & J. 58, 73, 74.

Acting under doubtful exercise of power of appointment.

If a doubt has arisen upon the validity of an appointment, and the trustee nevertheless acts upon it, he is affected by the consequences which follow upon his recognition of it: *Harrison v. Randall*, 9 Hare, 397; but see *post*, p. 232.

Cannot grant lease

Without an express power trustees cannot grant leases even for short terms: *Re Shaw*, 12 Eq. 124; and see

*Wood v. Patteson*, 10 Bea. 541. *Naylor v. Arnitt*, without power.  
*contra*, is not followed.

The leave of the Court must, it seems, be obtained to enable trustees to apply to Parliament for a private Act to sell heirlooms: *D'Eyncourt v. Gregory*, 3 Ch. D. 635. Leave to apply for Act;

And they must get leave to obtain the insertion of a clause in a bill before Parliament: *Jones v. Powell*, 4 Bea 96. to procure insertion of clause in bill.

After an action has been brought they must obtain leave to bring or defend any other action: *Seton*, 488. To defend actions.

Other matters relating to the special discretion of trustees will be found in the chapters of this work treating of the cases in which such discretion arises.

### *Execution of Trustees' Powers by the Court.*

Though the Court will prevent the failure of the trust by the death of the trustee, or by accident, by ordering its execution (*Brown v. Higgs*, 8 Ves. 570), it will not execute a mere power which the trustee may or may not choose to exercise (*Ibid.*), limiting itself in effect to such powers as the trustee is required to perform: *Pierson v. Garnet*, 2 B. C. C. 38, 226; *Richardson v. Chapman*, 7 B. P. C. 400; *Maddison v. Andrew*, 1 Ves. Sen. 57; *Burrough v. Philcox*, 5 M. & Cr. 92; *Salusbury v. Denton*, 3 K. & J. 535. Court executes absolute power.

Where, therefore, there is a power in the nature of a trust to distribute, but no gift over is made in case no distribution takes place, the Court will take upon itself the distribution on the ground that the objects of it were intended to take at all events: *Re White*, Johns. 656. Power to distribute.

And will make such distribution equally on the principle that equality is equity: *D'Oyley v. Attorney-General*, 4 Vin. Ab. 486; *Salusbury v. Denton*, 3 K. & J. 529. Mode of distribution.

Unless some mode of distributing the property is pointed out: *Gower v. Mainwaring*, 2 Ves. Sen. 87; *Mahon v. Savage*, 1 Sch. & L. 111. See further as to trust-powers, Sugden on Powers, 590; Farwell on Powers, Chap. XII.

*Power to consent to Marriage.*

All trustees to consent.

Where trustees are to have power to consent to the marriage of a beneficiary as a precedent condition, all should join in the consent, including it seems even such as have renounced the trust: *Worthington v. Evans*, 1 S. & S. 165; *Boyce v. Corbally*, Ll. & G. Plunk. 102; *Ewens v. Addison*, 4 Jur. N. S. 1034.

Where some are dead.

Where any of them have died, the consent of the survivors is sufficient: *Rop. Leg.*, 4th ed., 802; *Dawson v. Oliver-Massey*, 2 Ch. D. 758, explaining *Knight v. Cameron*, 14 Ves. 389, and *Collett v. Collett*, 35 Bea. 312; compare 2 Jarm. Wills, 49, and see Theobald on Wills, Ch. XXV., p. 309, *et seq.*

Consent in writing.

If the consent is to be in writing, such requirement should be complied with: *Worthington v. Evans*, 1 S. & S. 165; *Le Jeune v. Budd*, 6 Sim. 441.

Consent by conduct or acquiescence.

But the consent may be given substantially, though not in terms, by conduct, or be presumed after a long lapse of time: *Clarke v. Parker*, 19 Ves. 24; *Re Birch*, 17 Bea. 358; *Harrison v. Mayor of Southampton*, 4 D. M. & G. 137.

General consent.

So a general permission to marry at the discretion of the *cestui que trust* will be enough consent: *Pollock v. Croft*, 1 Mer. 181; *Mércer v. Hall*, 4 B. C. C. 326.

Conditional consent.

But the consent may be made conditional on a settlement being made: *Dashwood v. Bulkeley*, 10 Ves. 230.

Refusal of consent.

Trustees may refuse to consent without giving any reasons unless it is proved against them that they have so acted from any corrupt motives: *Dashwood v. Bulkeley*, 10 Ves. 245; *Clarke v. Parker*, 19 Ves. 18; and see *Goldsmid v. Goldsmid*, *ibid.* 368.

Fraud.

As to the effect of fraud in inducing the *cestui que trust* to marry without consent, see *Mesgrett v. Mesgrett*, 2 Vern. 580, explained in *Clarke v. Parker*, 19 Ves. 12.

Withdrawal of consent.

The consent may be withdrawn if obtained by fraud, but not otherwise: *Dillon v. Harris*, 4 Bli. N. R. 321; *Le Jeune v. Budd*, 6 Sim. 441.

Subsequent consent or approbation is ineffectual: *Reynish v. Martin*, 3 Atk. 330; *Long v. Ricketts*, 2 S. & S. 179. Subsequent consent.

When the power to consent is given to the trustees, but is previously exercised by the testator, it is held that the power is sufficiently exercised: *Wheeler v. Warner*, 1 S. & S. 304; *Tweedale v. Tweedale*, 7 Ch. D. 633. Consent of testator himself.

*Power of Trustees to build, repair and cut Timber.*

Money, which under a deed, will, or private act, is to be invested in the purchase of land to be settled to like uses, may be properly applied in the erection of new buildings, either in addition to or in substitution for old ones: *Drake v. Trefusis*, 10 Ch. 364; *Re Leslie*, 2 Ch. D. 185. New buildings or re-building allowed.

But not in repairs, permanent improvements or any outlay, which does not put new buildings on the ground: *Ibid.*; *Brunskill v. Caird*, 16 Eq. 493. It was held in this case that the several modes of application sanctioned by the Court under public acts might, with less difficulty, be acceded to under a private settlement: *Ibid.* p. 366. But not repairs. Application under statutes allowed in private trusts.

The same principles were followed where accumulations of a fund of personalty, settled on very similar trusts to those of the real estate, were ordered to be applied in rebuilding the mansion-house: *Donaldson v. Donaldson*, 3 Ch. D. 743. Fund arising from money laid out in land: rebuilding mansion-house.

So also lateral additions to a house have been sanctioned under the Lands Clauses Act, s. 69: *Re Speer*, 3 Ch. D. 262. Lateral additions.

And the erection of new farm buildings or cottages will be allowed: *Re Leigh*, 6 Ch. 887; *Re Newman*, 9 Ch. 681. New farm buildings.

Or, in additions to, or erecting buildings: *Exp. Rector of Claypole*, 16 Eq. 574. Additions to houses.

But repairs of the mansion-house or cottages are not allowed: *Drake v. Trefusis*, *supra*; *Brunskill v. Caird*, *supra*; *Re Nether Stowey Vicarage*, 17 Eq. 156; *Re* Repairs not allowed.

*Leigh, supra*; but see *Re Johnson*, 8 Eq. 348; *Exp. Rector of Grimoldby*, W. N. 1876, 96.

Money  
already  
paid.

Money already expended is never repaid out of the fund in Court: *Re Leigh, supra*; *Williams v. Aylesbury Railway Co.*, 9 Ch. 684; and see *Exp. Rector of Grimoldby, supra*.

But so much as has not been actually paid will be allowed: *Exp. Rector of Hartington*, W. N. 1875, 40; *Re Rector of Gamston*, 1 Ch. D. 477.

Drainage.

It seems that drainage is a proper object of expense: *Re Newman, supra*; *Re Leslie, supra*.

Water  
supply.

Or, a water supply to a house on the estate: *Re Croker*, W. N. 1877, 38.

Roads, &c.

And under the settled Estates Act, 1877, s. 20, streets, roads, paths, squares, gardens or other open spaces, sewers, drains or watercourses, whether for dedication to the public or not, may be made with money in Court under that Act.

Inquiry as  
to un-  
authorized  
outlay.

"Where a trustee has spent money on the trust property in an unauthorised way the rule is to give him, at his own expense, an inquiry whether the trust estate has been to any and what extent benefited. He cannot upon that footing obtain more than what is just." *Per James, L. J.*, in *Vyse v. Foster*, 8 Ch. 327; but see the cases mentioned in the judgment in *Caldecott v. Brown*, 2 Ha. 144.

Repairs,  
&c., under  
general  
power to  
manage.

A general power of management has been held to give a power to trustees to make permanent improvements: *Bowes v. Strathmore*, 8 Jur. 92.

Where  
buildings  
ruinous at  
testator's  
death.

Unless there is an undoubted power, trustees cannot repair a building which the testator must have known was ruinous when he died: *Bleazard v. Whalley*, 2 Eq. Rep. Pt. II. 1095.

Extent of  
building  
powers.

A power of building, given only in conjunction with powers of making agricultural improvements, cannot be exercised for the repair of a mansion-house: *Ibid.*

Limited  
Owners  
Residences  
Act, 1870.

Limited owners may now build and pay for mansion houses under the provisions of the Limited Owners Residences Act, 1870 (33 & 34 Vict. c. 56.)



Trustees of freehold land merely directed to be sold having, in the *bond fide* belief that they were improving the value of the estate, built a villa on the land, were allowed by arrangement to take the freehold land themselves, including its value in their general account: *Vyse v. Foster*, 8 Ch. 309; L. R. 7 H. L. 318.

Building on land devised on trust for sale.

A power to trustees to apply rents in repairs gives none to raise the expenses of rebuilding: *Fazakerley v. Culshaw*, 19 W. R. 793; but see *Re Lee*, 32 L. T. N. S. 298.

Raising expense by mortgage.

As to the power of a tenant for life to charge the inheritance with such expenses, see *Hibbert v. Cooke*, 1 S. & S. 552; *Re Skingley*, 15 Jur. 958; *Dunne v. Dunne*, 3 Sm. & G. 22; 7 D. M. & G. 207; *Dent v. Dent*, 30 Bea. 363.

Charging them on inheritance.

Under 27 & 28 Vict. c. 114, s. 24, trustees have power to obtain advances, to be charged on the property, for the purpose of improvement of land as defined in s. 9 of the same Act; the tenant for life or limited owner keeping down the interest of the charge (sec. 66), and the inheritance bearing the capital charge (sec. 49).

Statutory power.

Where a power is given to trustees to cut timber for necessary repairs, they may cut timber on one part of the estates for repairs on another part, and may sell timber when cut, to pay for timber of the same species with the timber so sold to be applied in necessary repairs, so long as they cut no more on the whole property than the repairs of the whole property required: *Attorney-General v. Geary*, 3 Mer. 513.

Timber.

Trustees have a general superintending control over the estate, and may cut decaying timber and pay the proceeds according to the settlement trusts: *Waldo v. Waldo*, 7 Sim. 261; 12 Sim. 107. As to the rights of parties to timber money, see *Lewis Bowles' Case*, Tudor, L. C. R. P. p. 27.

Trustees may cut timber for thinning plantations, in order to improve the rest of the trees, and such thinnings will belong to the tenant for life, but the decaying timber belongs to the inheritance: *Cowley v. Wellesley*, 35 Bea. 637; and see *Honywood v. Honnywood*, 18 Eq. 306.

Cutting timber.

Working  
open pits.

They may continue to work open pits for gravel, &c.; and the tenant for life will have the benefit : 35 Bea. 638.

Grants of  
waste.

They may grant portions of the waste of a manor, as being the ordinary mode of enjoying such property, the fines on the consequent admissions belonging to the tenant for life : *Ibid.* 641.

Fencing  
waste.

But the charges for fencing off such grants are payable out of the estate : *Ibid.*

### *Of Petitions for obtaining the Opinion of the Court.*

Any trustee may apply by petition or summons for the opinion, advice or direction of the Court on any question respecting the management or administration of the trust property. The order operates as a discharge to the trustee, unless fraudulently obtained : 22 & 23 Vict. c. 35, s. 30.

Rights of  
parties not  
affected.

Under this enactment the Court will advise trustees as to the management and administration of the trust in the manner which will be most for the benefit of the persons beneficially interested ; but will not decide any question affecting the rights of those persons *inter se* : *Re Lorenz*, 1 Dr. & Sm. 401. But see *Re Ware*, 20 W. R. 142.

No advice  
which  
leaves  
question  
undeter-  
mined.

Nor will it decide a question which would leave the real contest between the parties undetermined : *Re Evans*, 30 Bea. 232 ; and see *Re Mockett*, Johns. 628.

Court will  
not decide  
points of  
construc-  
tion.

The more recent decisions show that the Court will not under this enactment decide difficult questions of construction, or the effect of limitations on a settlement : *Re Lorenz*, *supra* ; *Re Mary Hooper*, 29 Bea. 656 ; *Re Evans*, *supra* ; *Re Mockett*, *supra* ; nor will the Court entertain the petition when the case goes into details with which it cannot deal effectually without a superintending power and being informed by affidavit ; *Re Barrington*, 1 J. & H. 142.

Nor one on  
which cases  
conflict.  
Definite

Nor a point on which there have been conflicting decisions : *Re Mockett*, *supra* ; and see *Re Shaw*, 12 Eq. 124.

The definite question to be asked should be propounded,

and not a general reference to the Court for its opinion : *Re Lorenz, supra* ; and see form of petition, Dan. Ch. Forms, No. 2177. question to be submitted.

No evidence is admissible, the Court looking no further than the statements on the petition : *Re Muggeridge, Johns*, 625 ; *Re Barrington*, 1 J. & H. 142. Evidence not admitted.

Nor will an inquiry at Chambers be directed : *Re Mockett, supra*. No inquiries directed.

No opinion will be given upon a fictitious case : *Re Box*, 11 W. R. 945. Fictitious case.

The Court has decided on advice petitions as to investments in East India Stock and Railway Debentures : *Re Simson*, 1 J. & H. 89. Investment : East India Stock ; Debentures.

In foreign securities : *Re Langdale*, 10 Eq. 39.

As to other investments : *Re McVeagh*, V.-C. W., 25 May, 1861 ; *Re Knowles*, 18 L. T. N. S. 809 ; *Re Shaw*, 12 Eq. 124 ; *Re French*, 15 Eq. 68 ; *Re Clergy Orphan Corporation*, 18 Eq. 280. Foreign stocks. Generally.

That coupons payable half-yearly were apportionable : *Re Rogers*, 1 Dr. & Sm. 338. Apportionment of dividend.

That freehold ground rents might be bought under a power to invest in land : *Re Peyton*, 7 Eq. 463. Ground rents.

That personalty to be invested in land, or settled on the same uses as real estate, might be applied in rebuilding : *Re Pearson*, 21 W. R. 401 ; *Re Hotham*, 12 Eq. 76. Rebuilding.

That a power to mortgage authorised a mortgage with a power of sale : *Re Chawner*, 8 Eq. 569. Exercise of powers.

That a power of sale allows a reserve bidding : *Re Peyton*, 10 W. R. 515. Reserved bidding.

As to the exercise of a power of maintenance and advancement : *Re Long*, 17 W. R. 218 ; *Re Tibbs*, 17 W. R. 304 ; *Re Kershaw*, 6 Eq. 322 ; *Re Larken*, W. N., 1872, 85. Advancement.

As to the appointment of colonial trustees : *Re Long*, 17 W. R. 218 ; *Re Smith*, 20 W. R. 695. Appointment of trustees.

As to the conversion of leaseholds : *Re Shaw*, 12 Eq. 124. Sale of leaseholds.

As to a power of leasing, *Ibid*.

- Consent to sale. As to a consent to a sale : *Poulett v. Hood*, 5 Eq. 115.
- Payment to foreign legatee. As to payment of a legacy to a person abroad and the proper receipt for it : *Re Hellmann*, 2 Eq. 363.
- Interest on legacies. As to the payment of interest on legacies : *Re Murray*, W. N., 1868, 195.
- Liability on covenants. As to distribution of the trust property, notwithstanding liability under the covenants of a lease : *Re Green*, 2 D. F. & J. 121.
- Compromise. As to agreeing to a compromise : *Re Martin*, M. R., 28th Dec., 1859 ; *Re Mackintosh*, 42 L. J. Ch. 208.
- Service of petition. The service of the petition should be left for the direction of the Court at the hearing : *Re Cook*, W. N., 1873, 49 ; and see *Re French*, 15 Eq. 68.
- Practice. With regard to the practice on advice petitions see Shelford, R. P. Stat. 722, and Dan. Ch. Pr. 1942.

## CHAPTER XVIII.

### OF SALES BY TRUSTEES.

TRUSTEES with a power of, or a discretionary trust for, sale or exchange, must not exercise it capriciously; and in general should in the one case have some "strong family purpose" in view, or in the other, an exchange for some particular other estate also for such purpose desirable to be acquired: *Mortlock v. Buller*, 10 Ves. 308; *Marshall v. Sladden*, 4 De G. & Sm. 468.

Under what circumstances it should be executed.

It is the duty of trustees for sale or selling under a power to do all things to obtain the best price possible: *Ord v. Noel*, 5 Madd. 438; *Downes v. Grazebrook*, 3 Mer. 200, 208; *Harper v. Hayes*, 2 D. F. & J. 542; *Noble v. Edwardes*, 5 Ch. D. 378, 389.

Best price to be obtained.

They must consider not only their duties towards the purchaser but towards all their *cestuis que trust*: Sugd. V. & P. 60; *Mortlock v. Buller*, 10 Ves. 308; *Lord v. Wightwick*, 4 D. M. & G. 808.

Trust to be exercised impartially.

Trustees should ascertain the value before selling, and not allow the property to go for less: *Conolly v. Parsons*, 3 Ves. 625; *Noble v. Edwardes*, 5 Ch. D. 378. They may in many cases charge the estate with the cost of a skilled valuation: Sugd. 60; *Campbell v. Walker*, 5 Ves. 678; and see *Mortlock v. Buller*, 10 Ves. 311.

Valuation.

They may sell by auction or private contract, unless one of such modes is exclusively pointed out in the trust: Sugd. 60; *Daniel v. Adams*, Amb. 495; *Bulteel v. Abinger*, 6 Jur. 410; *Noble v. Edwardes*, *supra*; 23 & 24 Vict. c. 145, s. 1.

May sell by auction or private contract.

- Descrip-  
in par-  
ticulars. They are, with reference to the Statute of Frauds, suffi-  
ciently described in particulars as "trustees selling under  
a power of sale:" *Catling v. King*, 5 Ch. D. 660.
- In lots. They may sell in lots: *Ord v. Noel*, 5 Madd. 438;  
*Thomas v. Townsend*, 16 Jur. 736; *Hobson v. Bell*, 2 Bea.  
17; *Harper v. Hayes*, *supra*; and 23 & 24 Vict. c. 145,  
s. 1.
- Part of  
trust es-  
tates. A discretionary power given by a testator to sell any of  
his estates is well exercised by a sale of all of them:  
*Rendlesham v. Meux*, 14 Sim. 249.
- Sale at  
under-  
value. If the trustees have done all they can to get the best  
price, they are not chargeable for a sale at an undervalue:  
*Ord v. Noel*, *supra*.
- Advertis-  
ing auc-  
tion. If the sale be by auction they should advertise it pro-  
perly: *Ibid*.
- Reserve  
price. They must not fix an auction on a day on which a good  
attendance cannot be expected: *Orme v. Wright*, 3 Jur. 19.
- Buying in. They may fix a reserve price: *Re Peyton*, 30 Bea. 252;  
and see *Levy v. Pendergrass*, 2 Bea. 415.
- Sale at  
reserve  
after abor-  
tive auc-  
tion. But without fixing a reserve they may not buy in  
(*Taylor v. Tabrum*, 6 Sim. 281), except under ss. 1 and 2 of  
23 & 24 Vict. c. 145.
- Biddings  
not opened. And if the auction prove abortive they may sell at  
the reserve: *Mather v. Priestman*, 9 Sim. 352; *Bous-  
field v. Hodges*, 33 Bea. 90; and see *Else v. Barnard*, 28  
Bea. 228; and with leave of the Court to one of them-  
selves: *Farmer v. Dean*, 32 Bea. 327.
- Course  
where rival  
offers  
made. The practice of opening biddings under sales by the  
Court is not extended to sales by trustees: *Harper v.  
Hayes*, 2 D. F. & J. 549.
- Favouring  
tenant for  
life. When two rival offers are made trustees need not ask  
one of the intending purchasers to increase his offer before  
accepting the other: *Harper v. Hayes*, 2 D. F. & J. 542;  
nor, though pressed by the *cestui que trust*, accept one  
offer rather than another against their own opinion: *Selby  
v. Bowie*, 4 Giff. 300.
- They should do nothing to enable the tenant for life to  
benefit by the sale at the expense of the remainderman:

*Mortlock v. Buller*, 10 Ves. 308; *Lord v. Wightwick*, 4 D. M. & G. 808.

But a tenant for life may, being appointed trustee, exercise a power of sale: *Forster v. Abraham*, 17 Eq. 351.

And a tenant for life may, if acting *bonâ fide*, properly act in the conduct of the sale on behalf of the trustees: *Hickley v. Hickley*, 2 Ch. D. 193, 190; and see *Hardwick v. Mynd*, 1 Anst. 109; *Rossiter v. Trafalgar Assurance Ass.*, 27 Bea. 377.

Trustees to pay debts may raise the money by sale or mortgage without going to the Court which, if the estate was afterwards administered by it, would always support such sale or mortgage: *Earl of Bath v. Earl of Bradford*, 2 Ves. Sen. 586, 590.

After a suit has been instituted trustees may not sell without leave of the Court: *Walker v. Smalwood*, Amb. 676; *Annesley v. Ashurst*, 3 P. W. 282; *Turner v. Turner*, 30 Bea. 414; and see *Bousfield v. Hodges*, 33 Bea. 90.

Where trustees are not restricted as to the time of sale, they will be justified in waiting until the *cestui que trust* calls upon him to sell, and then, after seeing that the price is fair, they should concur in the sale: *Palairret v. Carew*, 32 Bea. 564.

And the trustee is not entitled to make his consent conditional upon investigations into trusts and matters not relating to the trusts of the property to be sold; and he does so at the peril of costs of a suit to remove him: *Ibid.*

It may be stated generally, that a Court of Equity will not enforce on behalf of a purchaser a contract by trustees, of which beneficiaries have a right to complain as a breach of trust: *Ord v. Noel*, 5 Madd. 438; *Mortlock v. Buller*, 10 Ves. 292; *Sainsbury v. Jones*, 5 M. & Cr. 1; *Sneesby v. Thorne*, 7 D. M. & G. 399; *White v. Cuddon*, 8 Cl. & F. 766.

And in a case where the Court sees that by improper conditions, or otherwise, a disadvantageous sale will be made, it will interfere by injunction: *Dance v. Goldingham*, 8 Ch. 902.

Where tenant for life a trustee.

Tenant for life conducting sale.

Sale before administration decree.

After it.

Sale at instance of beneficiaries.

No specific performance where sale is in breach of trust.

Where injunction granted.

And for that purpose a beneficiary with a very small interest may institute proceedings: *Ibid.*

Concurrence of co-trustees.

Co-trustees must concur in the sale; and a contract entered into by one under a mistaken idea that the other would concur is not binding: *Buxton v. Buxton*, 1 M. & Cr. 80; *Sneesby v. Thorne*, 7 D. M. & G. 399; and see *Bulteel v. Abinger*, 6 Jur. 410.

But a sale by a trustee while his co-trustee lies by is binding on the latter: *Oliver v. Court*, 8 Price, 166; *Brice v. Stokes*, 11 Ves. 319; see *post*, p. 238, *et seq.*

Feme covert trustee.

If one of the trustees be a female and she marries, she cannot afterwards exercise the trust for sale, and the contract cannot then be enforced: *Avery v. Griffin*, 6 Eq. 606.

Sale with all convenient speed: a year allowed.

Trustees or executors directed to sell with all convenient speed must sell within a reasonable period, which is usually held to mean a year from the death of the testator: *Buxton v. Buxton*, 1 M. & Cr. 95; *Hughes v. Empson*, 22 Bea. 181; *Grayburn v. Clarkson*, 3 Ch. 605; *Sculthorpe v. Tipper*, 13 Eq. 232; *Turner v. Buck*, 18 Eq. 301; *Marsden v. Kent*, 5 Ch. D. 598.

Or more, if discretion *bonâ fide* used.

But if, in the *bonâ fide* exercise of their discretion, they do not sell within the year, they will not be made liable for a loss arising soon after: *Buxton v. Buxton*, *supra*; *Marsden v. Kent*, 5 Ch. D. 598.

Liability by delay after refusal of offer;

But neglect will render them liable, as where the loss occurs by delay after the refusal by them of a reasonable offer to buy: *Lowson v. Copeland*, 2 B. C. C. 156; *Powell v. Evans*, 5 Ves. 839; *Tebbs v. Carpenter*, 1 Madd. 290; *Fry v. Fry*, 27 Bea. 144.

or after request by *cestui que trust*.

Or where they refuse to exercise their power of sale at the request of the beneficiaries: *Taylor v. Tabrum*, 6 Sim. 281; and see *Harper v. Hayes*, 2 D. F. & J. 548.

Unanimity of beneficiaries.

But if some of the beneficiaries declare that they do not wish for an immediate sale, the trustees may exercise their discretion, though pressed by one *cestui que trust* to sell: *Marsden v. Kent*, 5 Ch. D. 598; compare *Deeth v. Hale*, 2 Moll. 317; *Pearson v. Lane*, 17 Ves. 101,



In the case of delay in a sale of shares, it is doubtful whether calls are chargeable as loss against the trustees : *Grayburn v. Clarkson*, 3 Ch. 605. Loss on sale of shares.

All the trustees are equally liable for delay, though not all may have been engaged in the active direction of the trust : *Oliver v. Court*, 8 Price, 166. Passive trustee liable.

One of the trustees who did not attain majority until seventeen months after the death of the testator was held liable with the others : *Sculthorpe v. Tipper*, 13 Eq. 232. Infant trustee liable.

If the trustees have not perversely delayed they will be allowed their costs : *Tebbs v. Carpenter*, 1 Madd. 290 ; *Taylor v. Tabrum*, 6 Sim. 281. Costs where delay not wilful ;

Where the question of liability arises in an administration suit, they will have to pay so much of the costs as arise out of their default : *Sculthorpe v. Tipper*, *supra*. where question arises in administration suit.

The postponement of the sale for a year is not allowed to affect the respective rights of tenant for life and remainderman, whether in the case of real or personal estate, or a reversion : *Walker v. Shore*, 19 Ves. 391 ; *Vickers v. Scott*, 3 M. & K. 500 ; *Greisley v. Chesterfield*, 13 Bea. 288 ; *Wilkinson v. Duncan*, 23 Bea. 469 ; *Marshall v. Crowther*, 2 Ch. D. 199. Delay not to affect rights.

The mode of adjustment with reference to interest on debts and legacies now adopted is settled by the cases of *Allhusen v. Whittell*, 4 Eq. 295 ; *Lambert v. Lambert*, 16 Eq. 320 ; *Marshall v. Crowther*, 2 Ch. D. 199 ; in which the course taken in *Greisley v. Chesterfield*, 13 Bea. 288, was disapproved. See *ante*, p. 95, *et seq*. Mode of adjustment :

Where the property directed to be sold is a reversion which falls in before sale, the tenant for life will be entitled to the value of it at the end of a year from the testator's death : *Wilkinson v. Duncan*, 23 Bea. 469 ; *Wright v. Lambert*, 6 Ch. D. 649 ; and see *Johnson v. Routh*, 27 L. J. Ch. 305 ; *Harrington v. Atherton*, 2 D. J. & Sm. 352. in case of sale of reversion.

Legatees will have interest, where the trust is for sale, and to pay them, from the death : *Pearson v. Pearson*, 1 Rights of legatees.

Sch. & L. 10; *Spurway v. Glynn*, 9 Ves. 483; *Shirt v. Westby*, 16 Ves. 393.

But where there is a mere charge of legacies, trustees for sale may defer the sale for a year without paying interest till that time: *Turner v. Buck*, 18 Eq. 301.

Sale after specified deferred period.

A direction to sell, with a power to postpone the sale for a given number of years, is held to be directory, and does not preclude the trustees from making a good title after such period: *Witchcot v. Souch*, 1 Rep. in Ch. 97; *Pearce v. Gardner*, 10 Ha. 287; *Cuff v. Hall*, 1 Jur. N. S. 972; and see *Chambers v. Howell*, 11 Bea. 6; *Cole v. Coles*, 6 Ha. 517.

Postponement or acceleration not to alter rights.

But trustees postponing or accelerating the sale cannot thus alter or prejudice the *cestuis que trust*, who must have their remedy if any loss is occasioned thereby: *Hawkins v. Chappel*, 1 Atk. 623; *Gaskell v. Harman*, 11 Ves. 507.

So, even against a purchaser, a sale made during the life, instead of at the death, of a person, was not enforced, as there were parties interested who were infants or not *sui juris*: *Blacklow v. Laws*, 2 Ha. 40; and see *Want v. Stallibrass*, L. R. 8 Ex. 175.

Acceleration by surrender of prior life estate.

But though a power to charge may not be accelerated by the surrender of a prior life estate, a power of sale may be so accelerated: *Truell v. Tysson*, 21 Bea. 437, and cases cited *arguendo*; *Mills v. Dugmore*, 30 Bea. 104.

And a reversion may, with the consent of the tenant for life, be sold, though he was not intended to be so benefited by the settlement: *Clark v. Seymour*, 7 Sim. 67; *Minet v. Leman*, 7 D. M. & G. 340.

Duration of indefinite power of will.

A power of sale, indefinite as to the time of its exercise, remains in existence as long as there is a settled estate in any part of the property, but not longer: *Taite v. Swinstead*, 26 Bea. 525; *Lantsbery v. Collier*, 2 K. & J. 709; *Jefferson v. Tyrer*, 9 Jur. 1083; *Re Brown*, 10 Eq. 349; and see *Trower v. Knightley*, 6 Madd. 134; *Re Cooke*, 4 Ch. D. 454.

No perpetuity.

Notwithstanding *Ware v. Pollhill*, 11 Ves. 257, it is

now considered that such a power does not offend against the rule against perpetuities : *Cole v. Sewell*, 4 Dr. & W. 1 ; *Lantsbery v. Collier*, 2 K. & J. 709.

The sub-settlement of a share of the trust property under a power of appointment will keep the power of sale alive : *Re Brown*, 10 Eq. 349.

Power kept alive by sub-settlement of shares.

But when all the interests have become absolute, the existence of a jointure will not prevent the power from ceasing : *Wolley v. Jenkins*, 23 Bea. 56.

When all interests absolute power ends.

A settlement in trust for A. for life, with a general power to appoint by will, does not give an absolute interest to A. so as to extinguish the power : *Reid v. Shergold*, 10 Ves. 370.

Trustees under different trusts may sell, or concur with other trustees or owners in a joint sale of, the different trust estates, or of the trust estate with another property, if such joint sale is obviously beneficial, and if the trust estate will not be affected by questions or conditions relating to such other trust estate or property : *Rede v. Oakes*, 4 D. J. & Sm. 505 ; *Re Cooper and Allen*, 4 Ch. D. 802 ; *Tolson v. Sheard*, 5 Ch. D. 19.

Joint sales of trust with other property.

So undivided shares, or a leasehold or life interest and the reversion, should if possible be sold together : *Re Cooper and Allen*, *supra* ; *Morris v. Debenham*, 2 Ch. D. 540.

What should be sold together.

After a joint sale, the trustees should apportion the price themselves, under proper advice, by putting a value on each property separately ; not by deducting the value of one from the lump price : *Re Cooper and Allen*, *supra*.

Apportionment of price.

If the sale be of undivided shares, the price is of course apportioned according to the shares : *Ibid.* ; *McCarogher v. Whieldon*, 34 Bea. 107.

On joint sales, where the price is paid into Court, the apportionment is made by the Court : *Cavendish v. Cavendish*, 10 Ch. 319.

A purchaser is not entitled to have the price apportioned till after the sale ; and if a fair valuation have

been previously made, the Court will not disturb it : *Morris v. Debenham*, 2 Ch. D. 540.

Onus to  
prove sale  
beneficial.

If the joint sale be not *ex concessis* beneficial, the onus is on the trustees to prove that it is so by the evidence of surveyors, &c.; and the purchaser should see that no *cestui que trust* is damnified, as the sale may be impeached by any beneficiary if it amount to a breach of trust : *Rede v. Oakes*, *supra*; *Dance v. Goldingham*, 8 Ch. 902, 913; *Re Cooper and Allen*, *supra*.

Sale of  
land with-  
out timber.

Trust lands subject to a power of sale may not be sold without the timber; or, for the purpose of paying debts, the timber without the land : *Cockerell v. Cholmeley*, 1 R. & My. 418; *Bennett v. Wyndham*, 23 Bea. 521; *Buckley v. Howell*, 29 Bea. 546; *Davies v. Wescomb*, 2 Sim. 425; *Kekewich v. Marker*, 3 McN. & G. 311.

But now the fact of a mistaken payment of timber money to the tenant for life will not invalidate the sale, if the money be brought into settlement as the Court directs : 22 & 23 Vict. c. 35, s. 13.

Mines  
without  
surface :  
25 & 26  
Vict.  
c. 108.

Under 25 & 26 Vict. c. 108, trustees may, with the leave of the Court, sell the surface with a reservation of minerals. As to the practice under this Act see Morgan and Chute, Chancery Acts, 269, 5th ed.

The petition under this Act need not be served on remaindermen : *Re Pryse*, 10 Eq. 531; *Re Nagle*, 6 Ch. D. 104.

Under  
Settled  
Estates  
Act, 1877.  
Consents  
to sales :

And the mines may also be reserved on a sale under the Settled Estates Act, 1877 (40 & 41 Vict. c. 18, s. 19).

Powers of sale by trustees are construed strictly; and if the sale is to be with the consent of *all* the *cestuis que trust*, it is probably not exerciseable after the death of one : *Sykes v. Sheard*, 33 Bea. 114, 2 D. J. & Sm. 6; see *Hawkins v. Kemp*, 3 East, 410.

Parol con-  
sent.

Or by a parol consent, when the consent is required to be in writing : *Phillips v. Edwards*, 33 Bea. 440; and see *Martin v. Mitchell*, 2 J. & W. 425; but see *Offen v. Harman*, 1 D. F. & J. 253.

Previous  
consent.

The consent must be proved to have been given be-

fore action brought: *Adams v. Broke*, 1 Y. & C. C. C. 627.

Under s. 17 of the Settled Estates Act (19 & 20 Vict. c. 120) re-enacted by s. 34 of the Settled Estates Act, 1877 (40 & 41 Vict. c. 18), where the settlement required the consent of the person who should be heir-at-law of A., such consent was dispensed with: *Beioley v. Carter*, 4 Ch. 230.

The alienation of his interest by a tenant for life does not destroy the validity of his consent to a subsequent sale by the trustees, with the concurrence of the alienee: *Alexander v. Mills*, 6 Ch. 124; and see *Simpson v. Bathurst*, 5 Ch. 193; *Long v. Rankin*, in D. P., cited Sugd. Pow. 8th ed. 895; *Warburton v. Farn*, 16 Sim. 625.

And an involuntary alienation by bankruptcy does not invalidate the consent: *Holdsworth v. Goose*, 29 Bea. 111; and see *Simpson v. Bathurst*, 5 Ch. 193.

And if the trustee in bankruptcy have sold the life-interest, consents of the purchasers are valid: *Eisdell v. Hammersly*, 31 Bea. 255.

Where the tenant for life is protector of the settlement, and acts as such in barring the entail, he may still give his consent to a sale: *Hill v. Pritchard*, Kay, 394.

A trustee may, without the consent of the beneficiaries, sell land devised "to be fairly and equally divided" if it is necessary to sell to give effect to the intention: *Re Cooke*, 4 Ch. D. 454.

Trustees for sale of two-thirds of a leasehold being plaintiffs in a partition action, were held to sufficiently represent the beneficiaries to obtain an order for sale without notice to them: *Stace v. Gage*, 8 Ch. D. 451.

The trustees should receive the consideration themselves, or by an agent or solicitor duly authorized in writing: *West v. Jones*, 1 Sim. N. S. 205; *Re Fryer*, 3 K. & J. 317; *Robertson v. Armstrong*, 28 Bea. 123.

The consideration must not be an annuity or rent charge: *Read v. Shaw*, Sugd. Pow. App. 953, cited 3 Y. & C. 375; *Reid v. Shergold*, 10 Ves. 370.

To be paid  
before  
premium  
given.

It should be paid in full before possession is given :  
*Oliver v. Court*, 8 Price, 166.

None to be  
left on  
mortgage.

Nor, it seems, may part of it be left on mortgage :  
*Davey v. Durrant*, 1 D. & J. 535 ; *ThurLOW v. Mackeson*,  
L. R. 4 Q. B. 97.

Nor left to  
a future  
option.

Nor may directors with power to sell or lease, grant a  
lease with an option to buy within 21 years, at a price  
fixed at the time of the lease : *Clay v. Rufford*, 5 De G.  
& Sm. 768.

Building  
land sold  
for fee-  
farm rent.

Under the Settled Estates Act, 1877 (40 & 41 Vict. c.  
18), s. 18, the consideration for land sold for building  
purposes may be a fee-farm rent.

Expense of  
preparing  
for build-  
ing.

And on a sale by trustees for building purposes, they  
may charge expenses of preparing the land on the pro-  
ceeds : *Cookson v. Lee*, 23 L. J. Ch. 473.

Title to be  
given by  
trustees.

Trustees must give a good marketable title, like  
any other vendors : *White v. Foljambe*, 11 Ves. 343 ;  
*McDonald v. Hanson*, 12 Ves. 277 ; Sugd. 69 ; and see  
*Pyrke v. Waddingham*, 10 Ha. 1, as to such a title ;  
*Hamilton v. Buckmaster*, 3 Eq. 323 ; *Mullings v. Trinder*,  
10 Eq. 449.

Allowance  
for selling  
claims.

In a proper case they will be allowed what they may  
have applied in settling claims interfering with the clear-  
ness of the title : *Forshaw v. Higginson*, 8 D. M. & G.  
827.

And trustees will be relieved from personal under-  
takings given to purchasers to settle such claims :  
*Wedgwood v. Adams*, 6 Bea. 600 ; 8 *Ibid.* 103.

Deprecia-  
tory con-  
ditions of  
sale.

The conditions of sale must be reasonable, and not  
depreciatory, whether they are authorized to introduce  
special conditions or not : *Hobson v. Bell*, 2 Bea. 17 ;  
*Dance v. Goldingham*, 8 Ch. 903 ; and see *Rede v.*  
*Oakes*, 4 D. J. & S. 513. As to what conditions are  
considered depreciatory, see *Falkner v. Equitable Soc.*, 4  
Drew. 352, and *Dart*, V. & P. 73 ; 1 Dav. Conv. 507, and  
cases there cited ; but see 23 & 24 Vict. c. 2.

Counsel.

Trustees may employ counsel to draw the conditions ;  
*Exp. Lewis*, 3 M. D. & D. 173.

Misdescription deprives them of right to compensation: *White v. Cuddon*, 8 Cl. & F. 766; Sugd. H. L. 590. Misdescription.

But it seems they may have to make compensation: *Crompton v. Melbourne*, 5 Sim. 353. As to what constitutes misdescription, see Dart, 133. Compensation.

Where the settlement creates an expectant succession, and contains a power of sale with a direction to reinvest in land, the succession duty is removed to the substituted property, or the proceeds of the sale till reinvestment: 16 & 17 Vict. c. 51, s. 42; *Dugdale v. Meadows*, 6 Ch. 501. Succession duty.

Trustees may sell without excluding the rules in s. 2 of the Vendor and Purchaser Act, 1874: 37 & 38 Vict. c. 78, s. 3, q. v. *post*, p. 144. Vendor and Purchaser Act, 1874.

Trustees for sale covenant usually only against incumbrances by them, and not for title: see Dart, 85; Sugd. 69; and the cases cited in Lewin, 386 n. (f). Covenant by trustees.

A concurring beneficiary must covenant for title: *Poulett v. Hood*, 5 Eq. 115. By concurring beneficiary.

Beneficiaries need concur only when the trustees cannot give receipts: *Binks v. Rokeby*, 2 Madd. 227; *Re London Bridge Acts*, 13 Sim. 176. When beneficiaries concur;

The Court is not in the habit of requiring their concurrence in sales under its direction: *Cottrell v. Cottrell*, 2 Eq. 330; *Freeland v. Pearson*, 7 Eq. 246; *Wyman v. Carter*, 12 Eq. 309. on sales by Court.

Trustees selling leaseholds have no right to a covenant by the purchaser to perform the covenants of the original lease: Lewin, 388, citing *Wilkins v. Fry*, 1 Mer. 244; *Garratt v. Lancefield*, 2 Jur. N. S. 177; Wms. Exors. 1751. Covenants on sale of leaseholds.

As to the rules of the Court in providing an indemnity fund against such covenants, in an administration suit, see *Smith v. Smith*, 1 Dr. & Sm. 384; Lewin, 388; 22 & 23 Vict. c. 35, s. 77; *Reilly v. Reilly*, 34 Bea. 406. Indemnity fund where leasehold covenants.

But trustees enter into covenants to produce deeds Covenants

for pro-  
duction.

limited to the time during which they are in their own hands : see the form, Lewin, 387 n. (d).

Enfran-  
chisement.

The conveyance on an enfranchisement of copyholds should be made to the trustees, and not the *cestui que trust*: *Wilson v. Allen*, 1 J. & W. 611; *Minton v. Kirwood*, 3 Ch. 619.

Convey-  
ance of  
outstand-  
ing legal  
estate.

An outstanding legal estate must be conveyed to the trustees of the equitable estate without requiring the beneficiaries to join: *Angier v. Stannard*, 3 M. & K. 566.

Costs of  
specific  
perform-  
ance suit.

Trustees are primarily liable for the costs of a specific performance suit; but may recover them from their *cestuis que trust*: *Edwards v. Harvey*, G. Coop. 40; *Hill v. Magan*, 2 Moll. 460; *Turner v. Harvey*, Jac. 178.

Survival of  
trust for  
sale.

On the death of a trustee, the surviving trustee may exercise a trust for, or discretionary power of, sale: *Lane v. Debenham*, 11 Ha. 192; *Hall v. May*, 3 K. & J. 585; *Farwell, Powers*, p. 367, *et seq.*

Conversion  
out and  
out does  
not warrant  
mortgage.

A trust for conversion out and out is not duly executed by a mortgage: *Haldenby v. Spofforth*, 1 Bea. 395; *Stroughill v. Anstey*, 1 D. M. & G. 643; *Page v. Cooper*, 16 Bea. 396; *Devaynes v. Robinson*, 24 Bea. 86.

Settled  
leaseholds.

This is especially the case where leaseholds are given generally to persons in succession with the consequences arising from the rule in *Howe v. Dartmouth*, 7 Ves. 150, *ante*, p. 91: *Stroughill v. Anstey*, 1 D. M. & G. 643.

Where  
estate  
benefited  
by mort-  
gage or a  
sum to be  
raised.

But if a particular charge is to be raised, a mortgage and not a sale may be allowed under circumstances of benefit to the estate: *Ibid.* 642.

"Mortgage  
is con-  
ditional  
sale," ex-  
plained.

Where the Court supports a mortgage instead of a sale out and out for the reasons mentioned above, it does so not because a "power to sell implies a power to mortgage," (as stated in *Mills v. Banks*, 3 P. W. 1, 9; *Haldenby v. Spofforth*, 1 Bea. 390, 395; *Ball v. Harris*, 4 M. & Cr. 264, 267), but as a conditional sale, or a *proper* mode of raising the money: *Stroughill v. Anstey*, 1 D. M. & G. 645.



Where a general trust directs no mode of raising charges, there is an implied trust to raise them, and a mortgage as well as a sale will be supported: *Ball v. Harris*, 4 M. & Cr. 264; *Stroughill v. Anstey*, 1 D. M. & G. 647.

Mode of raising charges not pointed out.

That the exigencies of the estate require a mortgage rather than a sale must be proved by the trustees: *Devaynes v. Robinson*, 24 Bea. 92.

Proof of necessity for mortgage.

A mortgage by *executors* many years after the testator's death should set a mortgagee on inquiry how debts requiring that course could subsist: *Ibid.*

Mortgage by executors after many years.

In an action by a mortgagee for foreclosure holding a mortgage granted by trustees for sale out and out, it seems that he will not be entitled to ask that the property be sold to satisfy his debt: *Palk v. Clinton*, 12 Ves. 48; *Page v. Cooper*, 16 Bea. 396.

Remedy of mortgagee.

A power in trustees to mortgage authorises them to insert a power of sale as incident to the mortgage: *Bridges v. Longman*, 24 Bea. 27; *Re Chawner's Will*, 8 Eq. 569; and see *Leigh v. Lloyd*, 2 D. J. & Sm. 330; *Clarke v. The Panopticon*, 4 Drew. 26, *contra*, has been disapproved: and see 23 & 24 Vict. c. 125, s. 11, under which a power of sale is included unless expressly excluded.

Powers of sale in mortgages.

23 & 24 Vict. c. 125, s. 11.

The same right is extended to executors: *Russell v. Plaice*, 18 Bea. 21; *Cruikshank v. Duffin*, 13 Eq. 555. *Sanders v. Richards*, 2 Coll. 568, *contra*, has not been followed. The Court usually inserts a power of sale on a mortgage directed by it, if the mortgagee should require it: *Selby v. Cooling*, 23 Bea. 418.

A trust for sale does not authorise a partition: *Brassey v. Chalmers*, 4 D. M. & G. 528.

Partition under trust for sale; under power of exchange.

But it seems now to be settled that a power of exchange does authorise a partition effected by a partition deed: *Re Frith and Osborne*, 3 Ch. D. 618, in which the previous decisions are reviewed.

*Primâ facie* a trust for sale does not justify a lease; but if circumstances appear under which such a lease

Lease under trust for sale.

might be upheld, no decree will be made in an action to enforce the agreement for the lease against the lessee in the absence of the *cestui que trust*: *Evans v. Jackson*, 8 Sim. 217; and see as to such leases by executors or administrators, *Keating v. Keating*, Ll. & G., t. Sugd. 133; *Hackett v. McNamara*, *ibid.* t. Plunk. 283; *Williams, Exors.* 939.

Trust to  
sell an  
equity of  
redemption  
and pay off.  
Sale under  
direction  
of mort-  
gage.

A trust for sale of property with a direction to pay off a mortgage will not prevent a sale subject to the mortgage: *Manser v. Dix*, 8 D. M. & G. 703.

A direction by a testator that money should be raised by mortgage has been held not to authorise a sale, though the trustee reported it to be more beneficial: *Drake v. Whitmore*, 5 De G. & Sm. 619.

*Discharge of the Purchaser by the receipt of the Trustee.*

Discharge  
under  
Lord St.  
Leonards'  
Act (22 &  
23 Vict.  
c. 35), s.  
23.

Under instruments executed since 13th August, 1859:—

“The *bonâ fide* payment to, and the receipt of any person, to whom any purchase or mortgage money shall be payable upon any express or implied trust, shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security”: 22 & 23 Vict. c. 35, s. 23 (Lord St. Leonards' Act).

Under  
Lord Cran-  
worth's  
Act (23 &  
24 Vict.  
c. 145),  
s. 29.

Under instruments executed since 28th August, 1860:—

“The receipts in writing of any trustees or trustee for any money payable to them or him by reason or in execution of any trusts or powers reposed or vested in them or him, shall be sufficient discharges for the money therein expressed to be received and shall effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof”: 23 & 24 Vict. c. 145, s. 29 (Lord Cranworth's Act).

In cases not falling within these Acts, the following rules have been adopted by the Courts:—

In cases not within the Acts,

The purchaser is completely discharged by the trustee's receipt:

(1.) Where an express power to give such receipt is vested in the trustee in terms discharging the purchaser from seeing to the application of the money: Lewin, pp. 394—5: *Binks v. Lord Rokeby*, 2 Madd. 227.

1. Express power to discharge purchaser.

But such an express power may be controlled by a contrary intention: *Brasier v. Hudson*, 9 Sim. 1.

Intention contrary to discharge.

And its terms must be strictly applicable to the particular fund received: *Pell v. De Winton*, 2 D. & J. 13; *Cox v. Cox*, 1 K. & J. 251.

Power must be strictly applicable.

Thus a power to invest on "security" (*Wood v. Harman*, 5 Madd. 368); or to vary securities (*Locke v. Lomas*, 5 De G. & Sm. 326), will give a power of discharge. But a power to invest on "securities" implies no power to give receipts on an investment on mortgage of land, which is a real security: *Hanson v. Beverley*, Sugd. V. & P. 848, 11th ed.

And a power of sale and exchange implies no power to give receipts: *Cox v. Cox*, 1 K. & J. 251.

Power of sale and exchange.

Nor does a trust to raise money by mortgage or sale: *Locke v. Lomas*, 5 De G. & Sm. 329.

Trust to raise by mortgage.

(2.) Where a clear immediate trust for sale is contemplated, and no receiving power is given, and no persons save the trustees can give immediate receipts: as in the case of incapacity in the beneficiaries: *Sowarsby v. Lacy*, 4 Madd. 142; *Lavender v. Stanton*, 6 Madd. 46; *Breedon v. Breedon*, 1 R. & M. 413.

2. Where trustees only can give immediate receipt. Infancy.

Or of the impossibility of ascertaining the beneficiaries at the time of the sale: *Balfour v. Welland*, 16 Ves. 151; *Groom v. Booth*, 1 Drew. 548, 566.

Unascertained beneficiaries.

(3.) Where a trust for sale is declared with discretionary trusts as to laying out the purchase-money: *Doran v. Wiltshire*, 3 Swans. 699; Lewin, p. 397, and *Wood v. Harman*, 5 Madd. 368; *Locke v. Lomas*, 5 D. G. & Sm. 326;

3. Where there are trusts over requiring discretion, &c.

*Ford v. Ryan*, 4 Ir. Ch. R. 342; *Tait v. Lathbury*, 35 Bea. 112.

4. Where trust for sale for payment of debts or legacies generally.

(4.) Where a trust directs the land "to be sold for the payment of debts generally," or of debts, legacies, and annuities, or where the land is charged with such payment: *Elliot v. Merryman*, 1 W. & T. L. C. 64; *Stroughill v. Anstey*, 1 D. M. & G. 635; *Rogers v. Skillicornè*, Amb. 188; *Dowling v. Hudson*, 17 Bea. 248; *Watkins v. Cheek*, 2 S. & S. 199; *Johnson v. Kennett*, 3 M. & K. 624; *Eland v. Eland*, 1 Bea. 235; *Corser v. Cartwright*, L. R. 7 H. L. 731.

When the debts are paid or never existed.

The fact that debts and legacies are charged, and that the debts have been paid at the time of the sale, or that there were none at the death of the testator, does not invalidate the receipt: *Johnson v. Kennett*, 3 M. & K. 624; *Eland v. Eland*, 4 M. & Cr. 429; *Page v. Adam*, 4 Bea. 269; *Forbes v. Peacock*, 1 Ph. 717; *Stroughill v. Anstey*, 1 D. M. & G. 635, 652; *Carlyon v. Truscott*, 20 Eq. 348.

Mention of one debt followed by general trust for payment.

The mention of one specific debt, if followed by a general charge of debts, does not prevent the rule from applying: *Robinson v. Lowater*, 5 D. M. & G. 272.

After inquiry by purchaser if there are debts.

An inquiry by the purchaser as to subsisting debts, if addressed after a long period of time since the death of the testator to beneficiaries who had become absolutely entitled to the legal estate, being unanswered, the purchaser was held to be sufficiently discharged: *Sabin v. Heape*, 27 Bea. 553.

Charge of debts same as trust.

That a general charge of debts gives an equal power with a trust to pay them to give valid receipts, see *Shaw v. Borrer*, 1 Keen, 559, 574; and see *Elliot v. Merryman*, *supra*; *Jenkins v. Hiles*, 6 Ves. 654, n.; *Bailey v. Ekins*, 7 Ves. 323; *Dolton v. Hewer*, 6 Madd. 9; *Ball v. Harris*, 4 M. & Cr. 267; *Forbes v. Peacock*, *supra*; *Commissioners of Charitable Donations v. Wybrants*, 2 J. & L. 197.

Trustees selling more than enough to pay debts.

The charge of debts relieves the purchaser from the necessity of ascertaining whether the trustees are selling more than is required to pay them: *Spalding v. Shalmer*, 1 Vern, 303,

And from inquiring as to a deficiency in the personal estate: *Culpepper v. Aston*, 2 Ch. Ca. 115; *Greetham v. Colton*, 34 Bea. 615; but see, *contra*, *Carlyon v. Truscott*, 20 Eq. 348.

Deficiency of personalty.

If the trust directs that lands shall be sold for the payment of certain debts, mentioning in particular to whom those debts are owing, the purchaser is bound to see the money applied for the payment of those debts, *Elliot v. Merryman*, *supra*; *Rogers v. Skillicorne*, Amb. 189; *Smith v. Guyon*, 1 B. C. C. 186; *Lloyd v. Baldwin*, 1 Ves. Sen. 173; *Culpepper v. Austin*, 2 Ch. Ca. 223; *Johnson v. Kennett*, 3 M. & K. 630; *Horn v. Horn*, 2 S. & S. 448.

This rule also is applicable to cases where the instrument is dated before the 13th August, 1859, for it appears that s. 23 of the Act (cited above) is not retrospective: *Bennett v. Lytton*, 2 J. & H. 158; *Lewin*, 394.

Rule applies to cases before Lord St. Leonards' Act.

After a general charge of debts has been satisfied, the purchaser need not see that legacies also charged have been paid: *Johnson v. Kennett*, *supra*; *Page v. Adam*, 4 Bea. 269; *Stroughill v. Anstey*, *supra*.

Does not apply as to legacies where debts are charged and paid.

Upon the question as to who is entitled to sell and give receipts, where there is a charge of debts and no trust for their payment by sale or otherwise: Lord St. Leonards' Act (22 & 23 Vict. c. 35) enacts as to wills subsequent to 13th August, 1859:—

Charge of debts and no direction as to payment.

That the trustees for the time being may sell or mortgage, notwithstanding the absence of any express power in the will: ss. 14, 15.

22 & 23 Vict. c. 35, ss. 14—18.

That if there be no devise to trustees the executors may sell or mortgage in like manner: s. 16.

That purchasers or mortgagees need not inquire whether a sale or mortgage thus effected has been correctly effected according to the statutory power: s. 17.

That these provisions are not to affect beneficial devises subject to debts or the power in such devisees to sell or mortgage: s. 18.

As to wills prior to 13th August, 1859,

1. A charge of debts with a devise to trustees, but with-

Cases before Act.  
1. Where

trustees  
also exe-  
cutors.

out an express power to sell, has been held to give the trustees such power: *Shaw v. Borrer*, 1 Keen, 559; *Ball v. Harris*, 4 M. & Cr. 264; *Eidsforth v. Armstead*, 2 K. & J. 333; *Sabin v. Heape*, 27 Bea. 553; *Corser v. Cartwright*, L. R. 7 H. L. 731.

Receipts  
by execu-  
tors.

But in other instances it was supposed that the executors had in such a case an implied power of sale: *Wrigley v. Sykes*, 21 Bea. 337; *Colyer v. Finch*, 5 H. L. C. 905. In one case, however, it was held that the executors had the power, coupled with that of calling on the trustees to convey the legal estate: *Hodkinson v. Quinn*, 1 J. & H. 303, 309; 30 L. J. Ch. 118; and see *Hooper v. Strutton*, 12 W. R. 367; see Dart, 567.

2. Benefi-  
cial devise  
charged  
with debts  
gives power  
to dis-  
charge  
purchaser.

2. A devise to a beneficiary charged with debts and legacies, or annuities, gave him a power of sale: *Elliot v. Merryman*, 1 W. & T. L. C. 64; *Page v. Adam*, 4 Bea. 269; *Colyer v. Finch*, 5 H. L. C. 922; Lewin, 406, 410; Dart, 568; but see 2 Dav. Conv. 990. From the words of s. 18 of Lord St. Leonards' Act it seems that the Legislature assumed this power existed, for after excepting this kind of devise from the Act it also saves "the power of any such devisee or devisees to sell or mortgage as he or they may by law now do."

3. Devise  
to persons  
successive-  
ly gives  
power to  
executors.

3. A devise, subject to debts, to a series of persons, but without a direction as to payment, has been held to give the executors a power of sale: *Robinson v. Lowater*, 5 D. M. & G. 272; *Bolton v. Stannard*, 4 Jur. N. S. 576; 6 W. R. 570; *Sabin v. Heape*, *supra*; *Greetham v. Colton*, 34 Bea. 615; but see *Cook v. Dawson*, 3 D. F. & J. 127. Mr. Lewin thought that here the executors had an equitable power, with the right to call upon the depositaries of the legal estate to convey: p. 410. See s. 16 of Lord St. Leonards' Act, *supra*.

4. Charge  
of debts  
and no  
devise:  
heir cannot  
sell but  
should join  
with exe-  
cutors,

4. A charge of debts without a devise of the land gives the heir no power of sale, but if the executors sell it seems that the heir should join in the conveyance: *Gosling v. Carter*, 1 Coll. 644; and see *Colyer v. Finch*, 5 H. L. C. 922; Lewin, p. 408, 410.

5. A charge of debts, where the devisee dies in the lifetime of the testator, leaves no power in any one to sell, and the Court alone can probably effect a sale : see *Lewin*, p. 409.

5. Charge where devise lapses.

Notwithstanding a general charge of debts or legacies, and notwithstanding the statutory provisions referred to, circumstances amounting to notice to the purchaser that the sale is improper, or his actual participation in such impropriety, will leave him unprotected by the trustee's receipt : *Stroughill v. Anstey*, 1 D. M. & G. 651 ; and see *Watkins v. Cheek*, 2 S. & S. 199, 205 ; *Colyer v. Finch*, 5 H. L. C. 923 ; but see *Corser v. Cartwright*, L. R. 7 H. L. 731, 737.

Notice to purchaser that sale is a breach of trust prevents his discharge.

A purchaser, knowing that a sale is being effected by a person who is not beneficial owner and not for the payment of any charge on the property, would not be absolved from seeing to the application of the purchase-money : *Watkins v. Cheek*, *supra* ; *Barrow v. Griffith*, 11 Jur. N. S. 6.

Sale not by owner, nor for paying charge.

A sale by trustees ostensibly for the payment of debts, at a time so long after the date of the charge that the debts must probably have been paid, should put the purchaser upon his inquiry as to the propriety of the sale : *Stroughill v. Anstey*, *supra* ; *Devaynes v. Robinson*, 24 Bea. 93 ; but see *Sabin v. Heape*, 27 Bea. 553.

Sale by trustees when debts must have been long paid.

As a suit paralyses the powers of trustees, a sale by them after its institution must be at least a matter for inquiry : *Lloyd v. Baldwin*, 1 Ves. Sen. 173 ; *Walker v. Smallwood*, Amb. 676.

Sale after action brought.

Notice of registered judgments will not affect a purchaser from a trustee for sale and distribution who is also executrix : *Drummond v. Tracy*, Johns. 608.

Notice of judgments.

Notice that the personal estate is sufficient, and that the debts are paid, where the realty was to be sold only in the case of a deficiency, is notice to a purchaser of a breach of trust within the above rule : *Carlyon v. Truscott*, 20 Eq. 351.

Notice that personalty sufficient.

Notice of a breach of trust is not to be implied from

Object of

sale not  
disclosed.

the fact that the purpose of the sale is not stated : *Corser*  
v. *Cartwright*, L. R. 7 H. L. 731.

Burden of  
proof.

The onus is on the objecting creditor to show that the  
purchaser had notice of a breach of trust : *Corser* v.  
*Cartwright*, *supra* ; *Oram* v. *Richardson*, W. N., 1877,  
13.



## CHAPTER XIX.

### TRUSTS FOR, AND POWERS OF, INVESTMENT.

UNLESS expressly forbidden by the settlement, trustees may now invest any trust fund on mortgage, Bank Stock, or East India Stock : Lord St. Leonards' Act, 22 & 23 Vict. c. 35, s. 32 ; see *post*, p. 132.

Lord St.  
Leonards'  
Act.

#### *Indefinite or Imperfect Trust to Invest.*

Previously to this enactment it was much doubted whether any trust moneys, not subject to a trust for investment in specified securities, or merely coming to persons clothed with a trust, could be invested on mortgage or on other than Consols : *Holland v. Hughes*, 16 Ves. 114 ; *Robinson v. Robinson*, 1 D. M. & G. 247, 255 ; *Raby v. Ridehalgh*, 7 D. M. & G. 104. See also 23 & 24 Vict. c. 145, s. 25, *infra*.

Absence of  
investing  
power :  
purchase  
of Consols.

Mortgages were not allowed where the trust was to invest in Consols : *Pride v. Fooks*, 2 Bea. 432.

Mortgage.

And the Court required a very special case to be made to sanction a mortgage to secure funds not subject to an express trust to invest : *Exp. Franklyn*, 1 De G. & Sm. 528 ; *Baud v. Fardell*, 7 D. M. & G. 633 ; *Shaw v. Bunny*, 2 De G. J. & Sm. 68 ; and see *Raby v. Ridehalgh*, *supra*.

Unau-  
thorised  
mortgage.

However, as between Consols and other Government stocks, trustees were not held liable for fluctuations : *Clough v. Bond*, 3 M. & Cr. 496.

Choice of  
Govern-  
ment  
securities.

And it was held that a power to invest on "Government or other good security" justified the retention of Navy

Retention  
of Navy  
Fives.

5 per Cents : *Baud v. Fardell*, 7 D. M. & G. 628 ; *Angell v. Dawson*, 3 Y. & C. 308.

Of India  
Stock.

But India Stock was not allowed to be retained where the trust was to invest in Government or real securities : *Dimes v. Scott*, 4 Russ. 195.

Redeem-  
able secu-  
rities.

An evident discretion as to investment will not allow trustees to invest in other than permanent or irredeemable securities ; and they may be liable for depreciation in such cases, especially where infants are entitled in remainder : *Stewart v. Sanderson*, 10 Eq. 26, a case of investment in 7 per Cent. Preference Railway Stock ; and see *Waite v. Littlewood*, 41 L. J. Ch. 636.

Railway  
preference  
stock.

Income of  
legacy to  
be paid on  
specified  
days.

If a settlor simply directs interest to be paid to a beneficiary on certain days, that Government security on which the dividends are payable on or about such days is a proper security : *Caldecott v. Caldecott*, 4 Madd. 189.

### *Exchequer Bills.*

Exchequer  
Bills.

Trustees may not invest in Exchequer Bills as a Government security, except under the Order of February, 1861, presently noticed : see *Knott v. Cottee*, 16 Bea. 77.

For a tem-  
porary pur-  
pose.

But for a temporary purpose, as for employing money until a mortgage is completed, such an investment was allowed : *Matthews v. Brise*, 6 Bea. 239.

Practice of  
Court.

The Court has temporarily invested funds in Exchequer Bills : see *Exp. South Eastern Railway Company*, 9 Jur. 650 ; but see *Exp. Chaplin*, 3 Y. & C. 397, *contra*.

### *Statutory Powers of Investment.*

Lord St.  
Leonards'  
Act.

23 & 24  
Vict. c. 38.  
s. 12.

The 32nd section of Lord St. Leonards' Act, above referred to, being held not to be retrospective (*Re Miles*, 27 Bea. 579), it was made so by s. 12 of 23 & 24 Vict. c. 38. Rights accrued between the dates of these two Acts are not affected by the latter Act : *Hume v. Richardson*, 8 Jur. N. S. 686.

Money  
arising  
from sales

Where no provision is made, money arising from sales or exchanges of land are to be laid out on other land in

England or in paying off incumbrances: 23 & 24 Vict. c. 145, ss. 4, 5, and 6. or ex-  
changes.

These Acts do not apply where moneys have been invested in Bank Annuities and the trustees have no power to vary: *Re Warde*, 2 J. & H. 191. Where no  
power to  
vary.

But in another case (in which *Re Warde* was not cited) Lord Romilly allowed such a variation, provided that the trustees did not invest in redeemable securities at a premium: *Waite v. Littlewood*, 41 L. J. Ch. 636.

By s. 12 of the 23 & 24 Vict. c. 38, trustees to invest in Government or Parliamentary securities may invest on securities in which "cash under the control of the Court" may by General Order be invested. "Cash  
under con-  
trol of the  
Court."

By the General Order of 1st February, 1861, such cash may be invested in Bank Stock, East India Stock, Exchequer Bills, 2½ per Cents., freehold or copyhold mortgages, Three per Cent. Reduced, and New Three per Cent. Annuities. Gen. Ord.  
1 Feb.  
1861.

The power to invest in East India Stock did not, before 30 & 31 Vict. c. 132, s. 1, extend to other than the stock of the old East India Company: *Peillon v. Brooking*, 4 L. T. N. S. 732; *Exp. Colne Valley Railway*, 1 D. F. & J. 53 (where, however, such an investment was held not to be a breach of trust); *Re Fromow*, 8 W. R. 272; *Equit. Rev. Soc. v. Fuller*, 1 J. & H. 382. East India  
Stock.

But that enactment extends to East India Stock, charged on the revenue of India, created after 13th August, 1859, though named in the Acts creating it as "India Stock": *Exp. Colne Valley Railway Co., supra*; see Lewin, p. 272. New India  
Stock.

Railway Stock charged on the revenue of India is not within the Acts above referred to: *Green v. Angell*, W. N. 1867, p. 305; but such investment is now permitted under s. 1 of 30 & 31 Vict. c. 132; and by s. 2 of the same Act investments on securities guaranteed by Parliament are authorised. Indian  
Railway  
Stock.

Under 23 & 24 Vict. c. 145, s. 25, trustees, with power to vary, having money in hand which it is their duty to invest, may buy and transpose Parliamentary or public or 22 & 23  
Vict. c.  
145, s. 25:  
investment  
of balances,

Government securities; and as to any purchase or transposition, except of or into Consols, must have the consent of the tenant for life if *sui juris*.

Land Improvement Act, 1864.

Under the Land Improvement Act, 1864 (27 & 28 Vict. c. 114, s. 60), trustees with power to lend on real security may (unless expressly forbidden) advance moneys on charges under that Act.

Securities guaranteed by Parliament.

Under 30 & 31 Vict. c. 132, s. 2, trustees may invest in securities guaranteed by Parliament.

Mortgages by corporations.

Under 33 & 34 Vict. c. 34, corporation and charity, or public, trustees may invest on mortgage without the restrictions or formalities required by the Mortmain Act.

Debenture Stock.

Under 34 & 35 Vict. c. 27, trustees having power to invest in mortgages or bonds of a railway or other company may (unless expressly forbidden) invest in Debenture Stock.

Metropolitan Consolidated Stock.

Under 34 & 35 Vict. c. 13, trustees having power to invest in public securities may (unless expressly forbidden) invest in Consolidated Stock issued by the Metropolitan Board of Works.

Money in Court has been ordered to be invested in Metropolitan Stock: *Re Redhead*, W. N. 1878, 194.

Application of sale moneys under Settled Estates Act, 1877.

Under the Settled Estates Act, 1877 (40 & 41 Vict. c. 18, s. 36, which is substituted for s. 25 of the Act of 1856), sale moneys until applied may be invested in securities in which cash under the control of the Court may be invested. This enactment gets rid of the doubt expressed in *Re Cook*, 12 Eq. 12; *Re Thorold*, 14 Eq. 31; *Re Taddy*, 16 Eq. 532; *Re Boyd*, 42 L. J. Ch. 506.

Interim investment in East India Stock.

Under the Lands Clauses Act, 1845 (8 & 9 Vict. c. 18, s. 70), interim investments may be made in East India 4 per Cent. Stock: *Re Foy*, W. N. 1875, p. 150; *Re Fryer*, 20 Eq. 468.

So also, under a special Act which authorises investments only in Navy Victualling or Exchequer Bills, or Reduced Annuities: *Re Birmingham Blue Coat School*, 1 Eq. 632; *Re Wilkinson*, 9 Eq. 343.

Lynch's Act.

Under Lynch's Act (4 & 5 W. IV. c. 19), where trustees

have power to advance on real security in England, Wales, or Great Britain, it is no breach of trust to invest on real security in Ireland; but in case persons under disability are interested, the sanction of the Court is necessary.

For the form of an order under this Act, see *Exp. French*, 7 Sim. 510; *Exp. Pawlett*, 1 Ph. 570.

The Court will refer the question of value to chambers: *Ibid.*

Petitions under this Act have not been uniformly granted: see *Stuart v. Stuart*, 3 Bea. 430; *Re Kirkpatrick*, 15 Jur. 941.

The consent to be given by the settlement will be required by the Court to be given in the form thereby prescribed: *Norris v. Wright*, 14 Bea. 303.

The Court will not permit a change of investment into a higher dividend-paying stock in the absence of special circumstances, making it desirable that the income of the tenant for life should be increased, if it appears to be injurious to those in remainder: *Cockburn v. Peel*, 3 D. F. & J. 170; *Mortimer v. Picton*, 12 W. R. 292; and see *Re Boyces*, Ir. R. 1 Eq. 45; 15 W. R. 827.

The tenant for life having an ample income is a reason against the transfer: *Cockburn v. Peel*, *supra*.

Where the petitioner was the settlor, with a power of revocation under certain circumstances, those in remainder being volunteers, the change into Bank Stock or East India Stock was allowed: *Equit. Rev. Soc. v. Fuller*, 1 J. & H. 379, followed in *Bishop v. Bishop*, 9 W. R. 549; and see *Cohen v. Waley*, 9 W. R. 137.

Where the fund for supplying maintenance was diminished by the dropping of an annuity, East India Stock was allowed to be taken; but there the infants were nearly of age: *Hurd v. Hurd*, 11 W. R. 50, and *S. C. sub. nom. Fluid v. Fluid*, 7 L. T. N. S. 590.

And a similar course was allowed where it was clearly intended that a specified income was to be obtained: *Mortimer v. Picton*, 12 W. R. 292.

Irish mortgages.

Form of order.

Reference as to value.

Cases where orders made.

Form of consent by beneficiary.

When Court allows changes of investment.

Extent of life-tenant's income.

Where petitioner settlor.

Change into East India Stock.

Where specified income to be obtained.

Where married woman of advanced age childless.

Where a married woman aged 51 and in ill health was absolutely entitled in default of issue, a transfer into East India Stock was allowed: *Vidler v. Parrott*, 12 W. R. 976; and see *Montefiore v. Guedalla*, W. N. 1868, p. 87.

Bank Stock preferred to India Stock.

The Court treats India Stock as involving a possible loss of capital by redemption, and prefers Bank Stock: *Re Langford*, 2 J. & H. 458.

Order to invest dividend where three due in the year.

It is usual to order that if the exchange be not completed before a given date, the next dividend is to be also laid out in the new investment, so as to prevent three dividends occurring in a year: *Vidler v. Parrott*, 12 W. R. 976.

But this may be dispensed with in a proper case: *Re Ingram*, 11 W. R. 980.

### *Personal Security.*

Trustees may not, unless otherwise provided, lend on bills, bonds, notes, &c.

It has long been settled that trustees are debarred, unless permitted by the settlement, from lending trust money on bills, notes, bonds, or other personal security: *Wilkes v. Steward*, G. Coop. 6; *Vigrass v. Binfield*, 3 Madd. 62; *Phillipson v. Gatty*, 7 Ha. 516; *Groom v. Booth*, 1 Dr. 548. *Harden v. Parsons*, 1 Ed. 148, is not law.

Solvency of borrower no excuse.

The solvency or credit of the borrower is no excuse to the trustees: *Terry v. Terry*, Prec. Ch. 273; *Forbes v. Ross*, 2 B. C. C. 430; *Walker v. Symonds*, 3 Sw. 63 n. (b); *Adye v. Feuilleateau*, 3 Sw. 84 n.; 1 Cox, 24.

Power must be express.

Even where the words of the investing power may seem to give a discretion to lend on personal security, trustees are not permitted to exercise it: *Wilkes v. Steward*, *supra*.

Power "to place out at interest."

Thus they were not justified so to lend by a power to "place out at interest at their discretion:" *Pocock v. Reddington*, 5 Ves. 794.

"To lend on best security."

And a trust to lay out on the best security that could be got is not fulfilled by taking a promissory note, which is evidence of a debt, but not security for money. The

security should be on land, or something that would be answerable for the money : *Ryder v. Bickerton*, 3 Swans. 80 n.

A distinction has been taken between getting in and investing on such security : *Powell v. Evans*, 5 Ves. 839. 843.

Distinction between retaining and lending on notes, &c. Deposit notes.

The promissory notes of a banker bearing interest are not a proper investment : *Darke v. Martyn*, 1 Bea. 525 ; see *ante*, p. 99.

Loan to banker.

And a loan of trust moneys by trustees to a bank in which one of them was a partner, on the security of certain bonds, was evidently a breach of trust : *Exp. Geaves*, 8 D. M. & G. 291.

The concurrence of sureties to a bond is not held to take the case out of the rule : *Holmes v. Dring*, 2 Cox, 1 ; *Watts v. Girdlestone*, 6 Bea. 188.

Sureties added do not alter rule.

An authority to place out at interest does not include a power to risk the money in trade : *Langston v. Ollivant*, G. Coop. 33 ; *Cock v. Goodfellow*, 10 Mod. 496 ; and see *Mills v. Osborne*, 7 Sim. 30.

Risking money in trade.

The trust in this case could not be set up against the general creditors of the trade : *Re Beale*, 4 Ch. D. 246 ; and see *Re Childs*, 9 Ch. 508 ; *Re Butterfield*, De G. 570 ; *Exp. Garland*, 10 Ves. 110.

A power to call in and invest at greater interest if the trustees are able to do so, does not warrant the purchase of an annuity : *Fitzgerald v. Pringle*, 2 Moll. 534.

Purchasing annuity.

A power to invest on "heritable or personal," or on "real or personal" security, if exercised strictly according to the terms of the power, will authorise an advance on a bond bearing interest at five per cent : *Forbes v. Ross*, 2 B. C. C. 430 ; *Pickard v. Anderson*, 13 Eq. 608 ; see *Cocker v. Quayle*, 1 R & M. 535.

"Heritable or personal" security.

If the loan is to be with the consent of a beneficiary, such consent must not be given prospectively as to future moneys to be lent to her husband : *Child v. Child*, 20 Bea. 50.

Prospective consent of beneficiary insufficient.

If with the consent of the trustees, both must consent :

Joint consent,

*Greenham v. Gibbeson*, 10 Bing. 363; and see *Offen v. Harman*, 1 D. F. & J. 253.

*Ex post facto* consent.

An *ex post facto* consent is insufficient: *Bateman v. Davis*, 3 Madd. 98; but as to acquiescence, see *Stevens v. Robertson*, W. N. 1868, p. 123.

Consent in writing.

If the consent is to be in writing to a loan on bond, a loan with an unwritten consent and without a bond is unauthorised and improper: *Cocker v. Quayle*, 1 R. & M. 535.

Loan to husband.

A large power of advancement for the benefit of a wife may authorise a loan to the husband: *Re Kershaw*, 6 Eq. 322; and see *Talbot v. Marshfield*, 3 Ch. 622.

Where there was power to lend to the husband a specific sum on a bond and a policy, and new trustees were to have the same powers as the original ones, the whole sum having been lent and repaid, the new trustees were held to be empowered to lend it again, the power being held unexhaustible and transmissible: *Versturme v. Gardiner*, 17 Bea. 338. On the subject of the transmissibility of powers, see *Cole v. Wade*, 16 Ves. 27; *Hall v. Dewes*, Jac. 189; *Newman v. Warner*, 1 Sim. N. S. 457.

Prescribed duration of loan.

An authorised loan to a husband on his covenant to pay in six months need not be called in in six months: *Child v. Child*, 20 Bea. 50.

Loan to co-trustee.

If the power include a loan to a co-trustee, the other trustee is not liable for its loss, if he have not contributed to it by any conduct or neglect on his part: *Paddon v. Richardson*, 7 D. M. & G. 563.

But a general power to lend on personal security does not authorise a loan to a co-trustee: — *v. Walker*, 5 Russ. 7; *Stickney v. Sewell*, 1 My. & Cr. 8.

Loan to life-tenant.

Or, if with the consent of the tenant for life, a loan to the tenant for life: *Keays v. Lane*, Ir. R. 3 Eq. 1; and see *Lander v. Weston*, 3 Dr. 389.

Power to lend to two is several.

A power to lend to A. and B. extends to a loan to either: *Parker v. Bloram*, 20 Bea. 295.

Renewal of personal bond.

Executors in trust finding a sum outstanding on the bond of a trustee for a minor, may, it seems, renew it with



the minor himself on his majority : *Charlton v. Durham*, 4 Ch. 433.

Trustees with a power of sale, and to invest in Government securities, cannot sell and receive part only of the price, leaving the rest on the security of an equitable deposit of the deeds by the purchaser : *Webb v. Ledsam*, 1 K. & J. 385. Equitable deposit.

An authority to lend on Government, real, or *personal* security, affords no excuse for an investment on insufficient real security : *Stickney v. Sewell*, 1 M. & Cr. 8. Insufficient security.

### *Stocks and Shares.*

“Public Stocks” are the public stocks of this country only : *Wells v. Porter*, 2 Bing. N. C. 730. What are Public Stocks.

Railway stock is included in the words “Government or other stock :” *Re Matheson*, 1 D. M. & G. 448 ; *Exp. Copeland*, 2 D. M. & G. 914. Railway Stock.

Preference railway stock is not included in “funds of companies incorporated by Act of Parliament,” as they are charged only on the profits of the concern : *Harris v. Harris*, 29 Bea. 107 ; and see *Stewart v. Sanderson*, 10 Eq. 26. Preference Stock :

Unless it is such as bears a fixed rate of interest : *Consterdine v. Consterdine*, 31 Bea. 330. bearing fixed interest ;

And is not transferable only into a single name : *Ibid.* transferable into single name.

French railway shares (redeemable) are not within a power to invest in “bonds, debentures, or the stocks of, any colony or foreign country :” *Re Langdale*, 10 Eq. 39. French railway shares.

But “stock in the foreign funds” means any foreign security for which the faith of the foreign government is pledged : *Ellis v. Eden*, 23 Bea. 543 ; *Cadett v. Earle*, 5 Ch. D. 710. “Stock in the foreign funds.”

Investments on American securities will not be allowed by the Court : *Bethell v. Abraham*, 17 Eq. 24. Not retained by the Court.

Without an express authority, trustees may not accept new shares in respect of shares forming part of the trust estate : *Sculthorpe v. Tipper*, 13 Eq. 241 ; and see *Bevan v. Waterhouse*, 3 Ch. D. 752. New shares.

- Liability for calls.** A trustee of shares for a company is not liable for calls if the articles indemnify him against them: *Re West Hartlepool Iron Co.*, 1 Ch. D. 664.
- Calls paid by life-tenant.** If calls become payable, and the trustees request the tenant for life to pay them, the latter has a lien on the shares for such payment: *Todd v. Moorhouse*, 19 Eq. 69.
- Apportionment of dividends.** The Court will not apportion dividends of stock purchased with trust money: *Rashleigh v. Master*, 3 B. C. C. 99; *O'Brien v. Fitzgerald*, 1 Ir. Ch. R. 293.
- Companies do not notice trusts.** By the 30th sect. of the Companies Act, 1862, "no notice of any trust, expressed, implied, or constructive, shall be entered on the register or be receivable by the registrar in the case of companies "under that Act, and registered in England or Ireland.
- Trustee is share-holder.** If the name of the trustee be on the register, he is liable to the company for calls; and the insufficiency of the trust estate is no defence: *Exp. Bugg*, 2 Dr. & Sm. 452; *Re Drummond*, 2 Giff. 189; *Bunn's Case*, 2 D. F. & J. 300; *Hoare's Case*, 2 J. & H. 229; *Cragg v. Taylor*, L. R. 1 Ex. 148; L. R. 2 Ex. 131.
- Legal title to trustee.** But in order to make him liable, the legal title must be complete in the trustee by a transfer into his name: *Hall's Case*, 1 McN. & G. 307.
- Indemnity of trustee.** The trustee has a right to be indemnified by his *cestui que trust*: *James v. May*, L. R. 6 H. L. 328; and see *Heritage v. Paine*, 2 Ch. D. 594. On this point and generally upon the subject of the liability for calls on shares held in trust, further reference should be made to Lindley on Partnership, p. 1358, *et seq.*, 4th ed.; Buckley on the Companies Acts, the notes to s. 30. A similar provision is made by s. 20 of the Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16).

### *Investment on Mortgage.*

- Trustees to leave one-third margin on freeholds;** Trustees cannot prudently lend more than two-thirds of the value of freehold *land* or other property of permanent value: *Stickney v. Sewell*, 1 M. & Cr. 13; *Norris v. Wright*, 14 Bea. 307; *Macloed v. Annesley*, 16 Bea. 605; *Phillipson*

v. *Gatty*, 7 Ha. 516, 528; *Stretton v. Ashmall*, 3 Dr. 12; and as to mortgages of copyhold land, see *Wyatt v. Shar-ratt*, 3 Bea. 498; *Farrar v. Barraclough*, 2 Sm. & G. 231.

or copy-  
hold;

Or, of speculative property like an hotel or place of amusement, see *Fowler v. Reynal*, 3 McN. & G. 509; *Budge v. Gummow*, 7 Ch. 719.

or specula-  
tive pro-  
perty.

But they should advance no more than half of the value of freehold houses: *Norris v. Wright*, *supra*; *Phillipson v. Gatty*, *supra*; *Macleod v. Annesley*, *supra*.

One-half  
on freehold  
houses;

Or, of property, like trade property, which is likely to fluctuate: *Stickney v. Sewell*, 1 M. & Cr. 8; *Stretton v. Ashmall*, *supra*.

or trade  
property;

Or, of renewable leaseholds for lives at a head rent, as in Irish holdings: *Macleod v. Annesley*, 16 Bea. 605.

or renew-  
able lease-  
holds in  
Ireland.

These rules are not of universal application; for if the security proves deficient, the burden will lie on the trustees to show that the property was of sufficient value: *Stickney v. Sewell*, 1 M. & Cr. 15; *Stretton v. Ashmall*, 3 Dr. 9; even where the Court has directed an inquiry: *Norris v. Wright*, 14 Bea. 303.

Rules as to  
margin not  
to relieve  
trustees  
as to de-  
ficiency.

The trustees should employ a person acquainted with the locality to value the property: *Budge v. Gummow*, 7 Ch. 719.

Valuer to  
be em-  
ployed.

And they must not rely on the valuation of the mortgagor or his agent: *Norris v. Wright*, *supra*.

Valuer to  
be inde-  
pendent.

Nor upon information supplied by a *cestui que trust*: *Macleod v. Annesley*, 16 Bea. 607.

Not to rely  
on informa-  
tion of  
*cestui que*  
*trust*.

Where the property is of a speculative character they should be doubly careful to obtain all available information: *Budge v. Gummow*, *supra*; and see *Stickney v. Sewell*, *supra*; *Stretton v. Ashmall*, *supra*.

Valuation  
of specu-  
lative  
property.

In the case of trade property, the accidental absence of competition in the same trade is not an element of value: *Stickney v. Sewell*, *supra*.

Valuation  
of trade  
property.

When trustees have acted *bonâ fide*, and taken a proper valuation, they will not be accountable, though the value of the property have some incidents of a speculative character, as where it consisted of unfinished houses being

Unfin-  
ished  
houses.

built for speculation : *Jones v. Lewis*, 3 De G. & Sm. 471 ; Mr. Lewin states, p. 287, n. (b), that this case was reversed on appeal, but the grounds for the reversal are unknown.

Freehold  
ground-  
rents.

Freehold ground rents are not an objectionable security ; and the value of the houses may be added, as the lessor can re-enter on non-payment : *Vickery v. Evans*, 33 Bea. 376.

Letting  
value.

If the rack-rental of the property is barely enough to answer the interest, that is good ground for charging\* trustees with loss : *Macleod v. Annesley*, 16 Bea. 600, 606.

On re-  
advancing,  
fresh valua-  
tion, &c.,  
to be made.

In re-advancing the trust fund to the same borrower, trustees must obtain a new valuation, and should demand an abstract, and whether any fresh incumbrances have been made : *Hopgood v. Parkin*, 11 Eq. 74.

negligence  
of solicitor.

And if it turns out, through the negligence of their solicitor, that any such incumbrances take priority over their security, they are liable : *Ibid.*

Loss after  
trustee's  
death by  
improper  
advance.

A breach of trust by a trustee, through lending on insufficient security, is not cured by repayment after his death ; and a subsequent loss by a re-advance will be chargeable to his estate : *Lander v. Weston*, 3 Dr. 389.

Second  
mortgage.

As to whether it is not, under any circumstances, a breach of trust to take a second mortgage, see *Waring v. Waring*, 3 I. Ch. R. 337 ; *Fowler v. Reynal*, 3 McN. & G. 500 ; *Norris v. Wright*, 14 Bea. 307 ; *Drosier v. Brereton*, 15 Bea. 222 ; *Lockhart v. Reilly*, 1 D. & J. 464, 476.

Mortgage  
deed to be  
contempo-  
raneous  
with ad-  
vance.

Trustees must not advance the money without a proper instrument of charge ; a subsequent execution of a mortgage, where the rights of mortgagors may be altered, will leave them still liable : *Fowler v. Reynal*, 3 McN. & G. 500.

Trustees to  
have  
separate  
solicitor.

It is evidently improper for trustees to be represented by the same solicitors as the borrower : *Waring v. Waring*, 3 Ir. Ch. R. 337 ; *Fyler v. Fyler*, 3 Bea. 550.

Fraud of  
solicitor.

Trustees are liable for the fraud of their solicitor : *Sutton v. Wilders*, 12 Eq. 373 ; and as to his forgery, see *Bostock v. Floyer*, 1 Eq. 26. So, where he represented the security as good, when, in fact, the mortgagor, who was also his client, had a life interest only, the loss was made to fall on the trustees : *Sutton v. Wilders*, 12 Eq. 373.

Trustees, with power to advance on real security, may invest on freehold ground rents: *Vickery v. Evans*, 33 Bea. 376; see *Re Peyton*, 7 Eq. 463.

But, *prima facie*, not on leaseholds: *Townend v. Townend*, 1 Giff. 201, 211; unless held at a peppercorn rent for a long term and without impeachment of waste: *Jones v. Chennell*, 8 Ch. D. 507.

And a power to lend on leasehold securities authorises only a charge on a long term: *Pince v. Beattie*, 9 Jur. N. S. 1119. Leaseholds:  
Power to lend on leaseholds.

And an advance on leaseholds is not warranted by a power to sell and invest on "land:" *Fuller v. Knight*, 6 Bea. 205.

A mortgage of a life interest with collateral security is not within the power to advance on real security: *Lander v. Weston*, 3 Dr. 389; and see *Fitzgerald v. Fitzgerald*, 6 Ir. Ch. R. 145. Mortgage of life estate.

Nor is a charge on a judgment affecting land in Ireland: *Johnston v. Lloyd*, 7 Ir. Eq. R. 252. Of a judgment.

As to whether a Scotch mortgage is within a power to lend on real security in England or Wales, see *Re Miles*, 27 Bea. 579. Scotch mortgage.

Turnpike bonds are within the power, see *Robinson v. Robinson*, 1 D. M. & G. 247; but see *Holgate v. Jennings*, 24 Bea. 630. Turnpike bonds.

Railway mortgages redeemable in seven years were held not to come within the power: *Mant v. Leith*, 15 Bea. 524; and see *Mortimore v. Mortimore*, 4 D. & J. 472; *Re Simson*, 1 J. & H. 89. Railway mortgages.

A stock mortgage is not authorised by the usual trust to invest in Government or Parliamentary stocks: *Whitney v. Smith*, 4 Ch. 513; and see *Bromley v. Kelly*, 39 L. J. Ch. 274. Stock mortgage.

As to the effect of investing by *mistake* in unauthorised securities, see *Hynes v. Redington*, 1 J. & L. 589. Mistake.

It is not a breach of trust to take a mortgage without a power of sale: *Farrar v. Barraclough*, 2 Sm. & G. 237. Mortgage without power of sale.

Where under a will trustees are to invest sufficient to produce a specific income for a tenant for life, and the Specified income

secured by advance at high rate, to increase residue.

capital is settled on a remainderman, the fact that the trustees themselves are interested in the residue does not prevent them, if they act *bond fide*, and lend on perfect security, from taking a security at a high rate of interest so as to invest a smaller sum, and thus to increase their own residue: *Vickery v. Evans*, 33 Bea. 383.

Advance to co-trustee.

As to a trustee lending trust-money on security belonging to his co-trustee, see *Butler v. Butler*, 7 Ch. D. 116, and *post* p. 332.

Trust stock transferred to the National Debt Commissioners on the ground of non-claim of dividends is ordered to be retransferred to the trustee and not to the *cestui que trust*: *Exp. Jameson*, 19 Eq. 430.

### *Investment in Land.*

Practice of Court.

By analogy to the practice of the Court (as stated in *Meyrick v. Laws*, 34 Bea. 59; and see *Daniell*, Ch. Pr. 117, *et seq.*), it would seem that trustees may be satisfied with a good holding, though not strictly a marketable title: and see *Re Sheffield &c., Railway Co.*, 1 Sm. & G. App. iv.

Marketable title.

Reference as to title.

The Court, however, where it takes upon itself to direct the trust for investment (as it does after action brought, *Bethell v. Abraham*, 17 Eq. 27; and see *Minors v. Bat-tison*, 1 App. Ca. 428), directs a reference as to title generally, and does not add "having regard to the conditions of sale." The Judge at Chambers considers whether any defect appearing on the title can be waived: *Meyrick v. Laws*, *supra*; *Exp. Christ's Hospital*, 2 H. & M. 166.

Vendor and Purchaser Act, 1874.

Forty years' title,

Under the Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78) s. 1, a forty years' title is substituted for a sixty years' title; but earlier title than forty years may be required in cases similar to those in which earlier title than sixty years might before the Act be required.

Trustee may buy under Act.

Under s. 3 of the same Act trustees may buy without excluding the operation of the provisions of s. 2, which are:—

Lessor's title not to

(1.) That under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold

or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold. be asked for.

(2.) Recitals, statements, and descriptions of facts, matters and parties, contained in deeds, instruments, Acts of Parliament, or statutory declarations, 20 years old at the date of the contract, shall, unless and except so far as they shall prove to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters and descriptions. Recitals, &c., 20 years old, binding.

(3.) The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title, in case the purchaser will, on completion of the contract, have an equitable right to the production of such documents. Equitable right to production sufficient.

(4.) Such covenants for production as the purchaser can and shall require shall be furnished at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser. Costs of covenant to produce.

(5.) Where the vendor retains any part of an estate to which any documents of title relate he shall be entitled to retain such documents. Right to retain deeds.

By s. 9 a vendor or purchaser may obtain the decision of a Judge in Chambers as to requisitions, objections, compensation or other questions arising out of the contract (not being a question affecting the existence or validity of the contract). Decision of Judge on title.

As to the limitations and provisions to be inserted in settlements of land purchased under executory trusts, see *ante*, p. 49.

A trustee to invest in land is presumed to have purchased in performance of his obligation: *Lechmere v. Lechmere*, Sugd. V. & P. App. 1117, 11th ed.; 3 P. W. 211; *Mathias v. Mathias*, 3 Sm. & G. 555; and see *post*, p. 305. Power presumed to be exercised.

And on proof of a purchase with trust-money, even by parol evidence, *cestuis que trustent* may follow the money into the land: *Price v. Blakemore*, 6 Bea. 507; Sugd. V. & P. 919. See further on the subject of following the trust fund, *post*, p. 304. Following the money into land purchased.

When  
power to be  
exercised.

A power to sell and reinvest in land to be settled upon the subsisting trusts should be exercised only with a view to reinvestment: *Price v. Blakemore*, 6 Bea. 507, and see *Mortlock v. Buller*, 10 Ves. 308.

Implied  
power  
to sell  
purchased  
land.

As to whether such a power gives an implied power of sale over the purchased property: *Master v. De Croismar*, 11 Bea. 184; *Elton v. Elton*, 27 Bea. 634; *Tait v. Lathbury*, 1 Eq. 174.

Conversion.

As to the remedy where trustees change the nature and quality of the property of their *cestuis que trust* by investing in land without an express power, see *post*, p. 304 *et seq.*

Discretion-  
ary power  
to pur-  
chase, when  
imperative.

Where trustees have a discretion to invest in land, they will not be ordered by the Court to exercise it if they do not withhold their concurrence from corrupt or unreasonable motives: *Lee v. Young*, 2 Y. & C. C. C. 532; *secus*, where they are required to do so when called on by the *cestuis que trust*; though even in this case they are entitled to an inquiry as to the desirableness of the purchase proposed: *Beauclerk v. Ashburnham*, 8 Bea. 322; *Cadogan v. Essex*, 2 Drew. 227.

Rights  
altered by  
exercise of  
discretion.

The trustees need not regard an alteration of rights by the purchase if their power is purely discretionary: *Minet v. Leman*, 7 D. M. & G. 351.

Reinvest-  
ment of  
sale  
moneys of  
gavelkind  
lands.

And when gavelkind lands are sold, the rights of the customary heir are gone on a reinvestment in other land: *Hougham v. Sandys*, 2 Sim. 95.

House  
property.

House property is included in a power to buy "lands, messuages or tenements": *Cadogan v. Essex*, *supra*; but is an investment not approved of by the Court: *Moore v. Walter*, 8 L. T. N. S. 448; 11 W. R. 713.

A fund in Court will not, therefore, be ordered to be invested in house property: *Moore v. Walter*, 11 W. R. 713.

Ground  
rents.

Freehold ground rents form an eligible purchase: *Re Peyton*, 7 Eq. 463; see *ante*, p. 142.

Copyholds  
for lives.

Whether copyholds for lives may be bought under a power to buy copyholds of inheritance, see *Trench v. Harrison*, 17 Sim. 111.



Leaseholds for lives in Ireland perpetually renewable are a good security for money: *Macleod v. Annesley*, 16 Bea. 600. Irish leaseholds for lives.

Trustees ought not to buy mines alone, as the tenant for life may exhaust them: Lewin, p. 438. Mines.

Nor a wood estate, for the same reason: *Ibid.* Wood estate.

Nor an equity of redemption, because it might be difficult to redeem, and there might be a sale without their consent; and because the legal estate should always be obtained by trustees: *Ibid.*; and see *Exp. Craven*, 17 L. J. Ch. 215. Equity of redemption.

Nor, without an express power, an advowson, because if no sale is effected in the lifetime of the tenant for life, he would get no benefit, and some remainderman might get all: Lewin, p. 438. Advowson.

Where trustees are directed to purchase "with all convenient speed," the income of the fund to be meanwhile accumulated, they must be diligent to find an investment, in which case the tenant for life takes the accumulations from the date of the conveyance; if they are not, he takes them from the end of a year from the receipt of the money by the trustees: *Parry v. Warrington*, 6 Madd. 155; and see *Entwistle v. Markland*, 6 Ves. 528; *Sitwell v. Bernard*, *ibid.* 520; *Elwin v. Elwin*, 8 Ves. 546, 557; *Walker v. Shore*, 19 Ves. 387. Direction to purchase "with all convenient speed."

If stock directed to be laid out in land is sold between the half-yearly dividend days, an equivalent is given to the tenant for life by way of apportionment: *Londesborough v. Somerville*, 23 L. J. Ch. 646. Apportionment where stock sold to buy land.

As to the effect of directing the investment in a particular estate, subject to the ability of the trustees to buy it, see *Upjohn v. Upjohn*, 7 Bea. 59. Purchase of specified estate.

The costs of a purchase by trustees must be borne by the particular sum directed to be invested: *Gwyther v. Allen*, 1 Ha. 505. Costs of purchase.

Until sale or exchange moneys can be reinvested, trustees must invest it in some authorised security (as to which, see p. 132 *et seq.*): 23 & 24 Vict. c. 145, s. 7. Interim investment of sale moneys.

## CHAPTER XX.

### OF TRUSTS AND POWERS RELATING TO RENEWABLE LEASEHOLDS.

23 & 24  
Vict. c.  
145, ss. 8  
and 9.  
Statutory  
power for  
trustees to  
renew.

Trustees under instruments dated after 28th of August, 1860, of renewable leaseholds may in their discretion, and if called upon by any beneficiary, must, do their best to obtain a renewal; but not in case the tenant for life is under no obligation to renew or to contribute to the expenses of renewal; and, except in such case, trustees may use money in hand, or raise money by mortgage, for the expenses of renewals: 23 & 24 Vict. c. 145, ss. 8, 9.

As the Act expressly excepts the case of a tenant for life being under no obligation to renew, it is necessary to show in what cases that obligation does or does not exist.

Where  
estate for  
life is legal  
and no  
custom to  
renew.

Where renewable leaseholds are given through legal limitations to persons in succession, and there is no custom or direction to renew, it is in the discretion of the tenant for life to renew or not: *Nightingale v. Lawson*, 1 B. C. C. 440; *Stone v. Theed*, 2 B. C. C. 248; and see *White v. White*, 4 Ves. 24; 9 Ves. 561.

Where life-  
tenant is a  
*cestui que  
vie*.

In the case of a lease for lives, it seems that if a legal tenant for life is one of the lives he cannot be called upon to renew: *Verney v. Verney*, 1 Ves. Sen. 429; *White v. White*, 4 Ves. 32; *Lawrence v. Maggs*, 1 Eden, 455.

Advance of  
fine re-  
couped.

And any money he may have paid will be a charge upon the estate: *Adderley v. Clavering*, 2 B. C. C. 659; 2 Cox, 192.

Intention  
to oblig  
him to  
renew.

But if there are indications in a will that the estate is to be kept up, as, for payment of an annuity out of the rents, the obligation to renew arises: *Lock v. Lock*, 2 Vern. 666.

And even where the tenancy for life is by construction legal (see *ante*, Ch. I.), it is subject to an implied duty to renew if the tenant for life is directed to pay the fines: *Hulkes v. Barrow*, Tambl. 264; and see *Montford v. Cadogan*, 19 Ves. 633.

Tenant for life directed to pay fines.

It is still doubtful whether, where the tenant for life is one of the lives, the fact that the legal estate is given to trustees affects the tenant for life's position with regard to his obligation to renew, in the absence of any express or implied trust for renewal: (see *White v. White*, 4 Ves. 32; *Verney v. Verney*, 1 Ves. Sen. 429,) though in one case the point was determined in the negative: *O'Ferrall v. O'Ferrall*, Ll. & G. (Plunk.) 79.

Doubt as to cases where legal estate in trustees and no direction to renew.

In the absence, therefore, of such express or implied trust, it seems that the statute would not authorise trustees to renew, if there was no custom or direction imposing that duty on the life tenant if his estate were legal.

Effect of Act.

That a trust to renew may be implied, was decided in *Montford v. Cadogan*, 19 Ves. 638, where the trust to pay the fines was held to imply a trust for renewal: and see *Trench v. St. George*, 1 Dru. & Walsh, 417.

Implied trust to renew.

And a trust for renewal is imported into a settlement executed pursuant to marriage articles: *Pickering v. Vowles*, 1 B. C. C. 197; *Graham v. Londonderry*, cited 2 B. C. C. 246; see *ante*, p. 50.

Under executory trust.

In cases falling under the statute, the absence of a trust to renew is supplied; and in cases of trusts to renew, created before the Act, though discretionary in form, they have been treated as imperative, supposing the trustees are able to renew on terms not disadvantageous to the estate: *Mortimer v. Watts*, 14 Bea. 624; and see *Milsington v. Mulgrave*, 3 Madd. 491.

Direction to renew, how construed.

Tenants for life subject to a direction to renew are trustees for that purpose, and may not surrender without the concurrence of the remainderman: *White v. White*, 4 Ves. 24; 9 Ves. 555.

Tenant for life bound to renew is trustee.

After the lease has expired it would seem that in an Mode of

recouping  
remainder-  
man.

action by a remainderman the Court will apply the rents through a receiver or otherwise to provide compensation for the omission by tenant for life to renew: *Bennett v. Colley*, 2 M. & K. 225.

Liability  
for non-  
renewal.

And tenants for life, like trustees, if bound to renew, are personally liable to repair the breach of trust if they do not renew: *Montford v. Cadogan*, 19 Ves. 635; *Colegrave v. Manby*, 2 Russ. 238.

### *Apportionment of Renewal Fines and Expenses.*

Expense  
borne in  
proportion  
to enjoy-  
ment.

Where there is no express direction of the settlor, the expenses of renewal are to be borne by tenants for life in proportion to the actual enjoyment they have of the renewed lease: *Nightingale v. Lawson*, 1 B. C. C. 440; *Stone v. Theed*, 2 B. C. C. 243, and 5 Ha. 451 n.; *White v. White*, 9 Ves. 554; *Jones v. Jones*, 5 Ha. 440; *Giddings v. Giddings*, 3 Russ. 241, 259; *Bradford v. Brownjohn*, 3 Ch. 711; *Isaac v. Wall*, 6 Ch. D. 706.

Speculative  
calculations  
rejected.

The extent of enjoyment is not to be determined by mere speculation, or by a calculation of probabilities: *Jones v. Jones*, 5 Ha. 465.

Lien for  
payment  
beyond  
enjoyment.

If the tenant for life renews, he will enjoy during his own life, and will have a lien upon the residue of the term for any overpayment he may have so made: *Ibid.*

How pay-  
ment by  
tenant  
for life  
secured.

If the remainderman renews, it seems that the only way of ensuring that the tenant for life shall pay the full amount due from him beyond the interest of the charge created for the purpose of the renewal, is to take security from the tenant for life: *White v. White*, *supra*; *Greenwood v. Evans*, 4 Bea. 44; *Reeves v. Creswick*, 3 Y. & C. 715; *Jones v. Jones*, 5 Ha. 466.

No distinc-  
tion as to  
term of  
years.

There is no distinction between the mode of apportionment to be followed in the two cases of the renewal of leases for lives and leases for years, the difficulty of arriving at the value being only greater in the former case: *Jones v. Jones*, *supra*; *Bradford v. Brownjohn*, 3 Ch. 714; *Isaac v. Wall*, 6 Ch. D. 706.

For the mode of apportionment, see *Bradford v. Brownjohn* and *Isaac v. Wall*, *supra*. Mode of apportionment.

As to the application of the principles of life insurance to these cases, see *Shaftesbury v. Marlborough*, 2 M. & K. 118; *Bennett v. Colley*, *ibid.* 234; *Greenwood v. Evans*, 4 Bea. 44. Insurance.

Where a provision has been made by the settlor for the expense of renewal by sale or mortgage of the estate itself, the tenant for life loses the rents of the part sold in the case of a sale, and keeps down the interest in the case of a mortgage: *Ainslie v. Harcourt*, 28 Bea. 313; *Bradford v. Brownjohn*, 3 Ch. 715; and see *Isaac v. Wall*, 6 Ch. D. 706. Renewal by sale or mortgage.

The result is the same where the sale or mortgage is of another estate, in which case the tenant for life of that estate is in a similar position: *Ibid.*

Where the expenses of renewal are directed to be paid out of the rents and profits, the whole burden is thrown upon the tenant for life: *Montford v. Cadogan*, 19 Ves. 635; *Shaftesbury v. Marlborough*, *supra*; *Solley v. Wood*, 29 Bea. 482. Renewal out of rents.

Trustees in this case must retain a sufficient part of the rents as they accrue to meet the renewal when it becomes necessary: *Ibid.* Sinking fund.

But it seems that if, notwithstanding the direction to pay out of rents, the intention is not that the payment should be made out of the *annual* rents, the corpus of the estate may be made to bear the expense according to the rules for apportionment above referred to: *Allan v. Backhouse*, 2 V. & B. 65; explained in *Solley v. Wood*, *supra*; and see *Shaftesbury v. Marlborough*, *supra*; Lewin, 324. Annual rents.

And where the direction is to raise out of rents or by mortgage, the power to mortgage is not conclusive as to the ultimate incidence of the charge, which will still depend upon the intention just referred to: See *Milsintown v. Portmore*, 5 Madd. 471; *Jones v. Jones*, *supra*; *Greenwood v. Evans*, *supra*; *Ainslie v. Harcourt*, *supra*; *Solley v. Wood*, 29 Bea. 482. Renewal out of rents or by mortgage.

## CHAPTER XXI.

### RULE AGAINST PERPETUITIES AS APPLICABLE TO TRUSTS —TRUSTS FOR ACCUMULATION—THELLUSSON ACT.

Application  
of the rule.

The rule against perpetuities prevents the settlement of property beyond a life or lives in being and 21 years after, and if this rule is infringed in creating a trust, the excessive trust is illegal and void: *Boughton v. James*, 1 H. L. C. 406; *Browne v. Stoughton*, 14 Sim. 369; *Curtis v. Lukin*, 5 Bea. 147.

Limitations  
of terms.

An attempt to engraft limitations on a term tending to a perpetuity, and not merely in trust to attend the inheritance, cannot be supported, and the term will still go to the executor: *Duke of Norfolk's Case*, 3 Ch. Ca. 5; 1 Vern. 164; *Attorney-General v. Sands*, Nels. 133; *Hunt v. Baker*, Freem. 62.

Charge  
raisable by  
excessive  
term.

A charge to be raised by means of a term, in case any of the testator's younger sons or their issue should become entitled to the estate, for the benefit of such as should not, was held void for remoteness: *Sykes v. Sykes*, 13 Eq. 56; following *Case v. Drosier*, 2 Keen, 764, 5 M. & Cr. 246; *Baker v. Tucker*, 3 H. L. C. 106.

Accumula-  
tion or  
manage-  
ment  
during re-  
curring  
minorities.

And a trust to accumulate, if any person for the time being entitled to the possession of the rents should be under 21, is void for remoteness: *Browne v. Stoughton*, 14 Sim. 369; *Marshall v. Holloway*, 2 Swans. 432; *Southampton v. Hertford*, 2 V. & B. 54.

But any trust under which accumulations would vest within the permitted period is good: *Oddie v. Brown*, 4 D. & J. 179.

A power given to trustees of a term to enter and manage

during the minorities arising under a strict settlement, is also void for remoteness : *Floyer v. Bankes*, 8 Eq. 115.

Gifts for purposes not void as coming within the purview of the Mortmain Act may still be invalid, as offending against the rule against perpetuities : *Thomson v. Shakespear*, 1 D. F. & J. 399 ; *Carne v. Long*, 2 D. F. & J. 75.

*Of Trusts to Accumulate : Thellusson Act.*

By the Thellusson Act (39 & 40 Geo. 3, c. 98) no property can be settled so that the rents, or produce thereof, shall be wholly or partially accumulated longer than the life of the settlor, or the term of 21 years from his death, or during the minority of any person who shall be living, or in *ventre sa mère*, at the time of the settlor's death, or during the minority of any person who, under the trusts would for the time being, if of full age, be entitled to the rents, dividends, or produce ; and in every case where any accumulations are directed otherwise, such direction shall be null and void, and the accumulations shall go to the person who would have been entitled to the rents and produce if such accumulations had not been directed : (s. 1).

Periods for accumulation : Thellusson Act.

But this provision does not extend to a provision for payment of debts of the settlor or other persons, for raising portions, or touching the produce of timber : (s. 2).

Exception of debts, portions, and timber money.  
Scotland,

This Act is extended to Scotland by 11 & 12 Vict. c. 36, s. 41.

With regard to Ireland, see *Ellis v. Maxwell*, 12 Bea. 104 ; *Heywood v. Heywood*, 29 Bea. 9 ; *Freke v. Carbery*, 16 Eq. 461.

Ireland.

The various periods during which the trust is permitted to continue, being in the alternative, only one of such periods can be taken by the settlor : *Wilson v. Wilson*, 1 Sim. N. S. 288 ; *Re Rosslyn*, 16 Sim. 391 ; *Ellis v. Maxwell*, 3 Bea. 595.

One period only allowed.

Though the period be not made to commence from the death of a testator, any such postponed period for accumu-

Time runs from death of testator.

lation must cease when 21 years after the death have elapsed: *Webb v. Webb*, 2 Bea. 493; *Attorney General v. Poulden*, 3 Ha. 555.

Lives must  
be in ex-  
istence.

The Act prevents an accumulation during the minority of an unborn child: *Haley v. Bannister*, 4 Madd. 275; *Ellis v. Maxwell*, 3 Bea. 596, 597.

And an accumulation until an unborn child attains 21 is therefore bad beyond 21 years: *Longdon v. Simson*, 12 Ves. 295.

Effect of  
infringe-  
ment of  
the Act.

If the period is beyond the statutory limit, but not too long with regard to the rule against perpetuities, the trust is void for the excess over the prescribed time: *Griffiths v. Vere*, 9 Ves. 127; *Southampton v. Hertford*, 2 V. & B. 54; *Longdon v. Simson*, 12 Ves. 295; *Scarisbrick v. Skelmersdale*, 17 Sim. 187; *Marshall v. Holloway*, 2 Swans. 432; *Boughton v. James*, 1 H. L. C. 406; *Turvin v. Newcome*, 3 K. & J. 16; and see *Tewart v. Lawson*, 18 Eq. 495.

Accumula-  
tion by  
operation  
of law.

Where the settlement or will contains no express direction to accumulate, yet if an accumulation to meet certain contingencies must take place, the case may, it seems, fall within the prohibition of the Act: *Tench v. Cheese*, 6 D. M. & G. 461; *Bective v. Hodgson*, 10 H. L. C. 656; *Mathews v. Keble*, 3 Ch. 696; and see *Bryan v. Collins*, 16 Bea. 17.

But this construction will not extend to the case of providing for a debt not in the contemplation of the testator, after an express direction to accumulate for another purpose: *Mathews v. Keble*, *supra*.

Direction  
to pay  
premiums  
on policy.

A direction by will to pay out of income the premiums on a policy effected on the life of another person is valid for the whole life insured, and not only for 21 years after the testator's death: *Bassil v. Lister*, 9 Hare, 177.

S. 2 extends  
to future  
debts.

The exception in s. 2 extends to debts arising after the death, as well as to those due at the death: *Varlo v. Faden*, 27 Bea. 255.

Discretion  
as to  
raising

Where trustees have a discretion as to raising the amount of the debts, they should have recourse to mines,



timber, or the like, so as not to annihilate the interest of the tenant for life by an exclusive application of rents : *Wilson v. Halliley*, 1 R. & M. 590 ; *Bennett v. Wyndham*, 23 Bea. 521. money to pay debts.

If they are expressly forbidden to sell, they may also not mortgage or raise the money by leases on fines : *Bennett v. Wyndham*, *supra*. Sales forbidden.

Where there has been a good trust for accumulation for payment of debts, and they have all been paid by sales under orders of the Court, the trust is at an end, and remaindermen are not entitled to keep the tenant for life out of possession in order to recoup the estates out of the rents and profits : *Tewart v. Lawson*, 18 Eq. 490. Where Court has ordered sales.

A strict settlement may be made, subject to a long term for raising an annual sum and accumulating it as a sinking fund for payment of mortgage debts : *Bateman v. Hotchkin*, 10 Bea. 426 ; *Bacon v. Procter*, T. & R. 31. Raising by sinking fund.

An accumulation of a portion of income to serve as a sinking fund to protect the rest, was in this view supported as coming within the exception, in s. 2, of directions to pay the debts of "some other person" : *Varlo v. Faden*, 27 Bea. 255, 1 D. F. & J. 211 ; and see *Mathews v. Keble*, 3 Ch. 697. Providing insurance fund to secure devised property.

Such direction must be *bonâ fide* for the payment of the debts of another : *Ibid*. Debt of "some other person."

Portions already charged, as well as to be charged, are within s. 2 : *Halford v. Stains*, 16 Sim. 488 ; and see *Barrington v. Liddell*, 2 D. M. & G. 498. Existing portions are within s. 2.

The portions must be strictly portions, and must also be in favour of children whose parent takes an interest, under the settlement, in the estate itself : *Eyre v. Marsden*, 2 Keen, 564 ; *Morgan v. Morgan*, 20 L. J. Ch. 109 ; *Shaw v. Rhodes*, 1 M. & Cr. 135, S. C. nom. *Evans v. Hellier*, 5 Cl. & F. 114 : *Jones v. Maggs*, 9 Hare, 605 ; *Watt v. Wood*, 2 Dr. & Sm. 56 ; but see *Middleton v. Losh*, 1 Sm. & G. 61. Only portions properly so called : interest of parent.

So a simple direction to divide amongst all the members of the family is not a provision for portions within

the section : *Burt v. Sturt*, 10 Hare, 415 ; *Edwards v. Tuck*, 3 D. M. & G. 40 ; *Drewett v. Pollard*, 27 Bea. 196 ; *Mathews v. Keble*, 3 Ch. 696.

Portions  
for children  
of other  
persons.

A settlor may direct accumulation for portions for the children of another person so long as their parent takes an interest under the settlement : *Barrington v. Liddell*, 2 D. M. G. 497.

Destination  
of unau-  
thorised  
accumula-  
tions.

As to the rules for determining the title to accumulations made during a period not within the provisions of the statute, see Theobald on Wills, pp. 307—8 ; 1 Jarman, 291 *et seq.* ; *Weatherall v. Thornburgh*, 8 Ch. D. 261.

## CHAPTER XXII.

### OF TRUSTS TO SECURE PORTIONS.

A PORTION is a pecuniary benefit intended for children provided by settlement or will, and if charged upon land, is usually secured by limiting a term to trustees upon trust to raise the amount out of rents or by mortgage or sale of the term. The appropriation of the fund, and the time of its vesting and payment, are generally subject to an appointment by the parent, with a provision for equal participation in shares vesting at 21 or marriage, payable after the death of the survivor of the parents, if they take a life interest, and payable at the time of vesting, if they do not. Provisions for interim advancement and maintenance until payment, are habitually inserted. See the forms in 3 Dav. Prec. Pt. II., 744, 986, 988, 1045, 1077, 1246, &c.

Definition :  
form of  
provisions.

For further information as to the meaning of a "portion," see 1 Jarm. Wills, 287 *et seq.*

Where children are the persons mentioned as to be portioned, grandchildren cannot take: *Robinson v. Hardcastle*, 2 B. C. C. 22, 343; *Smith v. Camelford*, 2 Ves. Jun. 698; *Butcher v. Butcher*, 1 V. & B. 79; *Exp. Bernard*, 6 Ir. Ch. R. 133; and see further, note to *Alexander v. Alexander*, Tudor L. C. R. P., p. 338 *et seq.*

Who may  
take.  
Grand-  
children.

By "younger children" is meant such as do not take the bulk of the estate: *Duke v. Doidge*, 2 Ves. Sen. 203 n.; *Chadwick v. Doleman*, 2 Vern. 527; *Jermyn v. Fellows*, Forrester, 93; *Collingwood v. Stanhope*, L. R. 4 H. L. 43; *Re Bayley*, 6 Ch. 590; and see *Umbers v. Jaggard*, 9 Eq. 200; *Twite v. Bermingham*, L. R. 7 H. L. 634; *Hervey-Bathurst v. Stanley*, 4 Ch. D. 251, 2 App. Ca. 698.

Younger  
children.

A younger child will therefore become an eldest son and disentitled to a portion if he succeeds to the family estate, whether such a consequence is provided for or not by the settlement: *Chadwick v. Doleman*, *supra*; *Davies v. Huguenin*, 1 H. & M. 730; *Collingwood v. Stanhope*, *supra*.

On the other hand, if an eldest son attains 21 and dies before the period of distribution without issue, he is to be regarded, for the purpose of ascertaining the portion class, as a younger son, and as such his representatives will take his share: *Ellison v. Thomas*, 1 D. J. & Sm. 18; *Davies v. Huguenin*, 1 H. & M. 730; *Collingwood v. Stanhope*, L. R. 4 H. L. 43.

Resettle-  
ment by  
eldest son.

But if the first born son, having at some point of time been entitled to a vested interest in the estate, has then joined in a re-settlement of it, he can never afterwards claim a portion: *Collingwood v. Stanhope*, *supra*.

Effect of  
disentail  
on younger  
son's right.

The possibility of a disentail being an incident of the settlement in such a case, the younger son having become an eldest son by the death of the first born son during his father's life, is not to lose his portion, though the estate may have gone: *Macoubrey v. Jones*, 2 K. & J. 684, following *Spencer v. Spencer*, 8 Sim. 87; and disapproving *Peacocke v. Pares*, 2 Keen, 689.

Mortgage  
by eldest  
son.

A mortgage, under similar circumstances, by an eldest son, is regarded as only a partial anticipation of the estate, and is not held to have the effect of preventing the shifting of the estate to the second son: *Harrison v. Round*, 2 D. M. & G. 190; and see *Fazakerly v. Ford*, 4 Sim. 390; *Taylor v. Harewood*, 3 Ha. 372.

Younger  
son taking  
estate  
under  
another  
title.

But if the estate has gone out of settlement by a bar of the entail, and the eldest son having died without issue, devises the estate to his younger brother, it seems that the latter (though no reasons are given in the report), taking it not under the settlement, but under the will, may still take his portion: *Adams v. Beck*, 25 Bea. 648.

Or by  
descent.

So also if he takes it not under the settlement, but by descent: *Sing v. Leslie*, 2 H. & M. 68.

If there be an eldest daughter, but a son younger than such daughter takes the estate, she will be treated as a younger child: *Pierson v. Garnet*, 2 B. C. C. 38; *Heneage v. Hunloke*, 2 Atk. 456; *Beale v. Beale*, 1 P. W. 243; *Teynham v. Webb*, 2 Ves. Sen. 210.

Eldest daughter treated as younger child.

But if an eldest daughter, or one who, on becoming such, takes the property, she loses her portion: *Northumberland v. Egremont*, 1 Ed. 435, 451; *Simpson v. Frew*, 5 I. Ch. R. 517.

Eldest daughter taking estate.

Where there are daughters only, it seems that a trust to raise portions, if there should be children *besides* an eldest or only son, does not take effect: *Walcott v. Bloomfield*, 4 Dr. & War. 211, 235.

Where daughters and no son.

A child *en ventre sa mère* is entitled to a portion raisable on the father's death: *Beale v. Beale*, 1 P. W. 243.

Child *en ventre sa mère*.

The latitude of construction allowed by the Court in determining who are younger children is not extended to cases where the provision is made by persons not parents or *in loco parentis*: *Hall v. Hewer*, Amb. 202; *Matthews v. Paul*, 3 Swans 328, 334; *Wilbraham v. Scarisbrick*, 1 H. L. C. 167; *Lyddon v. Ellison*, 19 Bea. 565; but see *Sugd. Pow.* 680.

Construction of gifts different where benefit comes from stranger, not from parent or one *in loco parentis*.

A grandmother has been regarded as *in loco parentis* for this purpose: *Teynham v. Webb*, 2 Ves. Sen. 198; *Lincoln v. Pelham*, 10 Ves. 173.

Grand-mother.

And an uncle: *Duke v. Doidge*, 2 Ves. Sen. 203 n.

Uncle.

For the cases showing who is considered to be *in loco parentis*, see *ante*, p. 65.

If the children to take are those of a designated person, children of any marriage of such person will take: *Brathwaite v. Brathwaite*, 1 Vern. 334.

Children by different marriages.

Unless the contrary be provided, children to be begotten will include those already born, and children begotten will include those to be born: *Hewet v. Ireland*, 1 P. W. 426; *Slingsby v. —*, 10 Mod. 398; *Hebblethwaite v. Cartwright*, Forrester, 30; *Doe v. Hallett*, 1 M. & S. 124; as to the meaning of such words in a will, see *Theobald*, pp. 139, 148.

Children begotten or to be begotten.

*Vesting of Portions.*

Where no time for vesting mentioned.

Portions are usually made to vest at 21 or marriage, and made payable after the death of both parents.

If no period of vesting is specified, they will not be held to vest until they are required, and the above periods are then fixed as being presumed to be in accordance with the intention of the provision: *Brathwaite v. Brathwaite*, 1 Vern. 334; *Bruen v. Bruen*, 2 Vern. 438; *Dormer v. Dormer*, Finch. 433; *Hinchinbroke v. Seymour*, 1 B. C. C. 394; *Tunstal v. Bracken*, 1 B. C. C. 124 n.; *Edgeworth v. Edgeworth*, Beatt. 328; *Howgrave v. Cartier*, 3 V. & B. 79; *Wellesley v. Mornington*, 2 K. & J. 153; *Swallow v. Binns*, 1 K. & J. 417; *Remnant v. Hood*, 2 D. F. & J. 396; *Day v. Radcliffe*, 3 Ch. D. 654.

Vesting not postponed to period for raising.

Vesting is not postponed, though it may not be in accordance with the settlement to raise the portion before the death of the tenant for life or until after the usual age of 21 years or marriage: *Smith v. Partridge*, Amb. 266; *King v. Withers*, Forrester, 117; *Hodgson v. Rawson*, 1 Ves. Sen. 44; *Evans v. Scott*, 1 H. L. C. 57.

Though such period be fixed.

Nor where portions are to be raised by sale or mortgage at a specified time after a testator's death: *Cowper v. Scott*, 3 P. W. 119; *Wilson v. Spencer*, 3 P. W. 172.

Nor where child or his executors to take.

Nor where the portion is limited to the child and his executors: *Lowther v. Condon*, 2 Atk. 127; but see *Stone v. Evans*, 2 Atk. 86; *Hutcheson v. Hammond*, 3 B. C. C. 128.

Nor right of entry.

Nor where a right of entry is given upon non-payment: *Sherman v. Collins*, 3 Atk. 318; *Embrey v. Martin*, Amb. 230.

Nor trust for sale.

Nor where there is a trust by will to sell and apply the proceeds for portions: *Bartholemew v. Meredith*, 1 Vern. 276; and see *Doughty v. Bull*, 2 P. W. 319.

Nor covenant to pay.

Nor where there is a covenant to pay the portion to trustees: *Fitzgerald v. Field*, 1 Russ. 430.

Nor where payable at death of life tenant.

The Court, in the absence of imperative words to the contrary, construes a provision for payment at the death

of the tenant for life so as not to interfere with the vesting, though the child die in the parent's lifetime: *Emperor v. Rolfe*, 1 Ves. Sen. 208; *Swallow v. Binns*, 1 K. & J. 425, in which the earlier cases are mentioned; *Currie v. Larkins*, 12 W. R. 515; *Jeyes v. Savage*, 10 Ch. 563; *Day v. Radcliffe*, 3 Ch. D. 654.

This is the case, though the trust be to raise the fund if the surviving parent "leave" any child at his death: *Woodcock v. Duke of Dorset*, 3 B. C. C. 569, 3 V. & B. 82 n.; *Powis v. Burdett*, 9 Ves. 428; *Howgrave v. Cartier*, 3 V. & B. 79; *Perfect v. Curzon*, 5 Madd. 442; *Torres v. Franco*, 1 Russ. & My. 649; and see *Swallow v. Binns*, *supra*.

Death ;  
"leaving"  
children.

But imperative words importing the necessity of surviving the parents are strictly construed: see *supra* :—

Thus, if on failure of children living at the death there is a gift over, and thereupon the term is to cease, sons who die in the lifetime do not take: *Hotchkin v. Humfrey*, 2 Madd. 65; *Wingrave v. Palgrave*, 1 P. W. 401; and see *Re Crosse*, 32 L. J. Ch. 344.

Vesting  
made dis-  
tinctly con-  
ditional on  
surviving  
parent.  
Gift over  
and cesser  
of term.

The like is the case where daughters are to take after failure of male issue: *Gordon v. Raynes*, 3 P. W. 134; *Malden v. Menill*, 2 Atk. 8; *Worsley v. Granville*, 2 Ves. Sen. 331.

Or to  
daughter  
on failure  
of issue  
male.

Or when the payment is deferred till the discharge of debts: *Bernard v. Mountague*, 1 Mer. 422.

Postpone-  
ment to  
debts.

Or if the portions are to be allotted to a given number of children: *Mosley v. Mosley*, 5 Ves. 248.

Class left  
to be ascer-  
tained.

With reference to the rule (*ante*, p. 158) that a younger son's portion is divested if he become the eldest son, it is to be observed that it is not till the time of payment that the fact as to who is the eldest son can be ascertained: *Ellison v. Thomas*, 1 D. J. & S. 27; *Collingwood v. Stanhope*, L. R. 4 H. L. 43; but see *Windham v. Graham*, 1 Russ. 331, and cf. *Re Bayley*, 6 Ch. 590.

When  
eldest son  
ascer-  
tained.

Portions do not vest so as to be payable during the parent's life where they arise under a settlement upon a

Portions  
under  
settlement

on second marriage for former children by name.

Portionists by name.

Condition of daughter's husband settling property.

Consent to marriage.

second marriage in favour of the former children *nominatum*: *Savage v. Carroll*, 1 B. & B. 265.

And as to the title of children whose portions are charged by name, see *Jermyn v. Fellows*, Forrester, 93; *Broadmead v. Wood*, 1 B. C. C. 77.

As to a condition precedent that a daughter's husband should make a settlement, see *O'Callaghan v. Cooper*, 5 Ves. 117.

A condition precedent that certain consents of trustees or others shall be given to the marriage of daughters is good (see *ante*, p. 104): *Clarke v. Parker*, 19 Ves. 15; *King v. Withers*, Pr. Ch. 348; and see *Creagh v. Wilson*, 2 Vern. 572.

As to conditions subsequent, see *Reynish v. Martin*, 3 Atk. 330.

### *Payment of Portions.*

When usually payable.

It is usually provided that portions shall be paid at 21, or marriage, if the event happen after the parents' death, and, if not, then immediately after the death of the survivor; see 3 Dav. Prec., Pt. I., p. 452.

At specified time.

If no such provision is made, *and no contrary intention appears*, portions payable at fixed times must be then paid, though parents may be living: *Sandys v. Sandys*, 1 P. W. 707; *Bacon v. Clark*, *ibid.* 478; *Stanley v. Stanley*, 1 Atk. 548; *Codrington v. Foley*, 6 Ves. 379; see and consider *Massy v. Lloyd*, 10 H. L. C. 248; *Lawton v. Swetenham*, 18 Bea. 98.

After father's death and in mother's lifetime, when.

If the father dies without issue male, the portions of daughters may be raisable during the surviving mother's lifetime: *Greaves v. Mattison*, 2 T. Jones, 201; *Staniforth v. Staniforth*, 2 Vern. 460.

Prior estate in grandfather.

Where the prior estate belongs to a grandfather who survives his son, the portions of the grandchildren are subject to the same rule: *Ravenhill v. Dansey*, 2 P. W. 179; *Codrington v. Foley*, 6 Ves. 364.

Cases where con-

A contrary intention is presumed in the following



circumstances,—in which the money is not raised during the tenancy for life :—

Where the term is to be void, if the father die without leaving a daughter : *Reresby v. Newland*, 2 P. W. 93.

If a power be given to appoint the shares of the portionists : *Codrington v. Foley*, 6 Ves. 380 ; *Wynter v. Bold*, 1 S. & S. 507.

If a power is given to the parent to revoke his appointment of the portions : *Ibid*.

If the portion term be limited in reversion expectant on the cesser of the life estate : *Butler v. Duncomb*, 1 P. W. 448.

If the provision for maintenance be deferred until the trustees come into possession of the term : *Brome v. Berkley*, 6 B. P. C. 108 ; but see *Hall v. Carter*, 2 Atk. 354.

If the portions be made conditional on there being male issue to take the estate : *Stanley v. Stanley*, 1 Atk. 549.

If the death of the wife without issue male is a condition precedent to the title to the portions : *Champney v. Champney*, 10 Mod. 315 ; but see *Hellier v. Jones*, 1 Eq. Ca. Ab. 337.

Where the portion trust is preceded by a jointure charge : *Hall v. Carter*, 2 Atk. 354 ; *Churchman v. Harvey*, Amb. 335.

Where the time is actually fixed after the death of the tenant for life : *Verney v. Verney*, 2 Ed. 26 ; *Remnant v. Hood*, 2 D. F. & J. 396.

Where the question as to who are to share depends on an event not ascertainable until the death of the tenant for life : *Corbett v. Maydwell*, 2 Vern. 640 ; *Hotchkin v. Humfrey*, 2 Madd. 65.

But if the parent have power so to direct, the money may be raisable in his lifetime : *Mayhew v. Middleditch*, 1 B. C. C. 162 ; *Hinchinbroke v. Seymour*, *ibid*. 395 ; and see *Green v. Belchier*, 1 Atk. 505.

Even if the term be reversionary : *Wynter v. Bold*, 1 S. & S. 507.

trary intention presumed.

Death of father without leaving daughter  
Power of appointment.

Power of revocation.

Term in reversion.

Maintenance deferred.

Condition of male issue taking estate.

Prior jointure charge.

Payment deferred till after death of life-tenant.

Contingency unascertainable till his death.

Power to order raising in appointor's life.

Where term reversionary.

Raising out of annual profits. As to the time of raising portions out of annual profits, see *Ivy v. Gilbert*, 2 P. W. 20; *Daly v. French*, 6 B. P. C. 55.

*How Portions are raised.*

By sale or mortgage : When out of rents or profits at fixed time. If portions are to be raised at a fixed time out of rents and profits, a sale or mortgage is a proper course: *Backhouse v. Middleton*, 1 Ch. Ca. 173; *Trafford v. Ashton*, 1 P. W. 415; *Bootle v. Blundell*, 19 Ves. 528; *Allan v. Backhouse*, 2 V. & B. 65; see *Mills v. Banks*, 3 P. W. 7.

"As soon as may be." So also if they are to be raised "as soon as conveniently may be:" *Trafford v. Ashton*, 1 P. W. 419.

Where term on reversion. And *a fortiori* if the term be reversionary: *Gerrard v. Gerrard*, 2 Vern. 458.

Rents insufficient. Or if the rents and profits are insufficient, and the portions are to be raised at a fixed time: *Stanhope v. Thacker*, Pr. Ch. 436.

Applica- tion of ac- cumula- tions. Accumulations of income belonging to an infant devisee subject to a portion charge, are first applicable for portions: *Okeden v. Okeden*, 1 Atk. 550; *Warter v. Hutchinson*, 1 S. & S. 276.

Sale not eligible mode of raising. But a sale should not be authorised by the settlement, for it is an ineligible mode of raising portions, though it may be resorted to when no other means are available: 3 Dav. Prec. Pt. I., p. 447, citing *Tasker v. Small*, 6 Sim. 625; *Garmstone v. Gaunt*, 1 Coll. 577; *Jones v. Jones*, 5 Ha. 461; *Hall v. Hurt*, 2 J. & H. 76.

No sale where gradual raising directed. And an intention contrary to a sale or mortgage is shown by a direction for raising portions gradually, or by the annexation of a leasing power: *Ivy v. Gilbert*, 2 P. W. 13; *Evelyn v. Evelyn*, 2 P. W. 673; *Small v. Wing*, 5 B. P. C. 66; and see *Bennett v. Wyndham*, 23 Bea. 521.

Form of lease. As to whether a lease for securing portions should be on a fine or at rack rent, see *Smith v. Evans*, Amb. 633.

Where no term limited. Where portions are simply charged, and no term is limited, they may be raised by mortgage or sale, though a power of entry and distress be expressly given: *Kelly v. Bellew*, 4 B. P. C. 495; *Meynell v. Massey*, 2 Vern. 1.

Several mortgages may be effected of different parts of the property : *Mosley v. Mosley*, 5 Ves. 248. Repeated mortgages.

Where the portion term is too short to serve as a security, timber or mines may be resorted to instead of the estate itself : *Offley v. Offley*, Pr. Ch. 27. Felling timber and mines.

### *Amounts raisable.*

An excessive benefit to any one child should be guarded against by providing that no more should be raised than would have been raisable if children who have died under age and unmarried had not been born : *Greaves v. Mattison*, 2 T. Jones, 201 ; *Re Colley*, 1 Eq. 496 ; *Knapp v. Knapp*, 12 Eq. 238. How to provide against excessive benefit to individual children.

In the absence of such a provision, the whole amount is raisable though some may have so died : *Hemming v. Griffith*, 2 Giff. 403. Effect of absence of such provision.

Though part of the lands charged may be forfeited or lost in an action, the whole amount is to be raised from the remainder : *Sheldon v. Dormer*, 2 Vern. 310 ; *Hansard v. Kemey*s, 2 J. Wils. 106. Where part of land lost.

But if the estate be insufficient, the portionists must abate rateably : *Brathwaite v. Brathwaite*, 1 Vern. 334. Abatement.

The costs of raising portions are payable out of the estate, and not out of the portions : *Michell v. Michell*, 4 Bea. 549 ; *Armstrong v. Armstrong*, 18 Eq. 541. Costs.

Where several estates are to bear the portions equally, they are charged with amounts respectively referable to their values at the time of payment : *Wardell v. Wardell*, 4 B. C. C. 286 ; *Heveningham v. Heveningham*, 2 Vern. 355. Apportionment between several estates charged.

If one of the estates is withdrawn from the settlement, the other bears only its proper proportion of the charge : *Clough v. Clough*, 5 Ves. 710. Withdrawal of one estate from settlement.

Where real or personal estate are made liable for portions, the Court will look to the intention as to whether the one or the other is to be regarded as the primary, or only as the collateral source of payment : *Lechmere v. Charlton*, 15 Ves. 193. Collateral security.

Marshalling.

Where there is a prior charge on one of the estates, the estates are marshalled in favour of portionists : *Lanoy v. Duke of Athol*, 2 Atk. 444 ; *Reeve v. Reeve*, 1 Vern. 219.

As to marshalling between creditors and portionists under a will, see *Sherman v. Collins*, 3 Atk. 320 ; *Pearce v. Loman*, 3 Ves. 135.

### *Interest and Maintenance.*

4 per cent.  
from time  
when  
raisable.

Interest on portions at 4 per cent. is payable, unless otherwise provided, from the time when they are raisable, though not from the period when they vest ; *Butler v. Duncomb*, 1 P. W. 448 ; *Trafford v. Ashton*, *ibid.* 415 ; *Evelyn v. Evelyn*, 2 P. W. 669 ; *Bagenal v. Bagenal*, 6 B. P. C. 81 ; *Hall v. Carter*, 2 Atk. 358 ; *Pomfret v. Windsor*, 2 Ves. Sen. 487 ; *Lewis v. Freke*, 2 Ves. Jun. 511.

Where  
portions  
charged  
on rents.

If the portions are payable out of rents until a sufficient sum is obtained, no interest is allowable in the meantime : *Ivy v. Gilbert*, 2 P. W. 13 ; but see *Small v. Wing*, 5 B. P. C. 69 ; *Daly v. French*, 6 *Ibid.* 55.

Under a  
power.

If the portions are raisable under a power, interest is computed from the time specified by the appointment under the power : *Mayhew v. Middleditch*, 1 B. C. C. 162 ; *Conway v. Conway*, 3 *Ibid.* 267 ; *Lewis v. Freke*, 2 Ves. Jun. 507.

Laches.

Though laches may not prevent the raising of the portion, it will prevent interest being allowed until action brought : *Merry v. Ryves*, 1 Ed. 1 ; *Barrington v. O'Brien*, 1 Ball & Beatty, 180.

Interest  
from death  
of parent.

When portions are made payable at 21 or marriage, interest will be given by way of maintenance though not provided by the settlement, until the time for payment, if the father dies before such time has arrived : *Englefield v. Englefield*, 2 Vern. 236 ; *Warr v. Warr*, Pr. Ch. 214 ; *Greenhill v. Waldoe*, *Ibid.* 367 ; *Harvey v. Harvey*, 2 P. W. 21 ; *Incedon v. Northcote*, 3 Atk. 430, 438 ; and see *Mostyn v. Mostyn*, W. N. 1878, 180.

The rule is the same though the term be in reversion : *Staniforth v. Staniforth*, 2 Vern. 460. Where term reversionary.

Past maintenance may be recovered upon the portions of children who have died since the father's death, and before the time of payment : *Staniforth v. Staniforth*, *supra* ; *Bond's Case*, 2 Ch. Ca. 165. Past maintenance.

But not as to those who predeceased him : *Corbett v. Maidwell*, 1 Salk. 159.

Interest is not to be permitted to accumulate, but must be used for purposes of maintenance : *Boycot v. Cotton*, 1 Atk. 553. Accumulation of interest.

A subsequent provision under the father's will does not oust the title to maintenance : *Bond's Case*, *supra* ; *Ravenhill v. Dansey*, 2 P. W. 179 ; *Foljambe v. Wilmoughby*, 2 S. & S. 165. Satisfaction of maintenance by subsequent will.

Maintenance is payable immediately after the parent's death until the time of raising, unless a contrary intention be expressed : *Lyddon v. Lyddon*, 14 Ves. 558 ; *Hume v. Rundell*, 2 S. & S. 174 ; *Beal v. Beal*, Pr. Ch. 405. Maintenance from death of parent.

As to maintenance in respect of expectant portions, see *Knapp v. Knapp*, 12 Eq. 238. Where portions are expectant.

No money is applicable for advancement, unless, as is usual, such an application is expressly provided for : *Warr v. Warr*, Pr. Ch. 213 ; and see *Robinson v. Cleator*, 15 Ves. 526 ; *Lewis v. Lewis*, 1 Cox, 162. Advancement.

See further on the subjects of maintenance and advancement, next chapter.

As to what is an "advancement by portion" under the Statute of Distributions, see *Taylor v. Taylor*, 20 Eq. 155.

### *When Portions sink.*

Unless a contrary intention appear, portions charged on real estate sink if the portionist dies before vesting : *Poulet v. Poulet*, 1 Vern. 204 ; *Boycot v. Cotton*, 1 Atk. 555. On death before vesting.

An interim provision as to interest in the meantime does not prevent the sinking : *Boycot v. Cotton*, *supra* ; Interim interest.

*Yate v. Fettiplace*, Pr. Ch. 140; *Warr v. Warr*, Pr. Ch. 213.

Conditions unfulfilled. Portions will sink if the condition upon which they are to be taken is not complied with, *e.g.*, marriage with consent: *Harvey v. Aston*, 1 Atk. 361; *Pulling v. Reddy*, 1 Wils. 21.

On default of appointment: If the fund be raisable out of real and personal estate, the portions in such a case sink as to the realty, though not as to the personalty: *Poulet v. Poulet*, 1 Vern. 204; *Attorney-General v. Milner*, 3 Atk. 115; *Pearce v. Loman*, 3 Ves. 135.

on land to be bought. If charged on land to be purchased, the rule as to sinking is the same as with regard to an immediate charge on land: *Harrison v. Naylor*, 3 B. C. C. 108.

### *Merger of Portions.*

Where portionist takes estate; Portions merge if the portionist become owner of the estate; *Donisthorpe v. Porter*, 2 Ed. 162; *Compton v. Oxenden*, 2 Ves. Jun. 261; and see notes to *Forbes v. Moffatt*, Tudor, R. P. Cases, 837.

or becomes tenant in tail. The rule is probably the same where the portionist becomes tenant in tail; *Ware v. Polhill*, 11 Ves. 277; *Smith v. Frederick*, 1 Russ. 174, 208.

Accrued share. A distributive share of the portion fund of a deceased portionist does not merge in the eldest son's interest when he takes the estate: *Richards v. Richards*, Johns. 754.

Legal estate in mortgage prevents merger. An outstanding legal estate in a mortgagee will prevent a merger: *Gwillam v. Holland*, cited, 2 Ves. Jun. 263; *Otway-Cave v. Otway*, 2 Eq. 725.

No merger against creditors. And there is no merger in derogation of the rights of creditors or infants: *Donisthorpe v. Porter*, 2 Ed. 162.

Intention against merger prevails. Merger may also be prevented by anything showing an intention that the portions shall not merge: *Forbes v. Moffatt*, 18 Ves. 391; *Smith v. Frederick*, 1 Russ. 209; *Richards v. Richards*, Johns. 766.

Partial merger. If part only of the land comes to the owner of the portion, only a proportionate part of the portion merges:

*Price v. Seys*, Barn. 117; *Rushout v. Rushout*, 6 B. P. C. 89.

If the portions are equal distinct sums to be given to children as tenants in common, as distinguished from a gross sum otherwise distributable, no merger will take place if the estate comes to any of such children: *Otway-Cave v. Otway*, 2 Eq. 725.

Where portionists take as tenants in common.

### *Satisfaction.*

Portions may be satisfied by a legacy bequeathed by a parent, or one *in loco parentis*, if the legacy be of an amount equal to or larger than the portion: *Hinchcliffe v. Hinchcliffe*, 3 Ves. 516.

By subsequent legacy.

A smaller provision may be a satisfaction, as far as it goes, in point of interest or amount: *Jesson v. Jesson*, 2 Vern. 255; *Warren v. Warren*, 1 B. C. C. 305; *Thynne v. Glengall*, 2 H. L. C. 131; and see *McCarogher v. Whieldon*, 3 Eq. 236; *Chichester v. Coventry*, L. R. 2 H. L. 92; *Bethell v. Abraham*, 3 Ch. D. 590 n.; *Fairer v. Park*, 3 Ch. D. 309; *Mayd v. Field*, 3 Ch. D. 587.

By lesser provision.

Identity of benefit is not required; variations of times of vesting, delay in payment, &c., are not sufficient to overthrow the rule that the Court leans against double portions: *Jesson v. Jesson*, 2 Vern. 255; *Every v. Gold*, 2 Ch. R. 1; *Thynne v. Glengall*, 2 H. L. C. 131.

Small variations of interest in subsequent gift.

But a contingent legacy is no satisfaction: *Bellasis v. Uthwatt*, 1 Atk. 426; *Duffield v. Smith*, 2 Vern. 258.

Contingent legacy.

Nor a life interest or reversion: *Hancock v. Hancock*, 5 Vin. Abr. 292.

Life interest or reversion.

Nor a gift of land in fee or for years: *Chaplin v. Chaplin*, 3 P. W. 245; *Davie v. Hooper*, 6 B. P. C. 51; *Bengough v. Walker*, 15 Ves. 507; *Goodfellow v. Burchett*, 2 Vern. 298; *Grave v. Salisbury*, 1 B. C. C. 425.

Gift of land.

Both provisions must be by the parent: *Roberts v. Dixall*, 2 Eq. Ca. Ab. 668, pl. 19; *Walpole v. Conway*, Barn. 153.

Both provisions by parent.

The presumption against double portions is to be regarded as fainter where the settlement precedes the

Strength of presumption.

will : *Chichester v. Coventry*, *supra* ; and see *Cooper v. Macdonald*, 16 Eq. 258 ; and see *Russell v. St. Aubyn*, 2 Ch. D. 398 ; *Bennett v. Houldsworth*, 6 Ch. D. 671.

Second  
settlement.

So also where the second provision is by another settlement : *Davis v. Chambers*, 7 D. M. & G. 386 ; *Palmer v. Newell*, 8 D. M. & G. 74.

Intention  
to benefit  
other chil-  
dren where  
parent pays  
a portion  
to one.

It is a question of intention, to be determined by circumstances, whether a parent paying portions out of his own pocket may be taken to mean a benefit for the other children, or, by keeping up the charge, to benefit his estate : *Ford v. Tynte*, 2 H. & M. 324, 331, where the earlier cases on this point are mentioned.

See further on the doctrine of satisfaction, of election in cases of satisfaction, and of the admissibility of extrinsic evidence in these cases, notes to *Exp. Pye*, 2 W. & T. L. C. 356 *et seq.*



## CHAPTER XXIII.

### TRUSTS FOR, AND POWERS OF MAINTENANCE AND ADVANCEMENT.

#### I.—*Maintenance.*

IN all cases, where any property is held by trustees in trust for an infant, either absolutely, or contingently on his attaining the age of 21 years, or on the occurrence of any event previously to his attaining that age, it shall be lawful for the trustees at their sole discretion to pay to the guardians (if any) of such infant, or apply for, or towards the maintenance or education of such infant, the whole or any part of the income to which such infant may be entitled in respect of such property, whether there be any other fund applicable to the same purpose, or any other person bound by law to provide for such maintenance or education or not, to accumulate the residue of such income; and to apply any part or the whole of such accumulations as if the same were income in the then current year: 23 & 24 V. c. 145, s. 26.

Statutory power of maintenance: Lord Cranworth's Act.

This section is not retrospective, and applies only to instruments dated since the 28th of August, 1860.

Not retrospective.

It is held that the power given by the section stops short at majority, and does not apply to the interval between 21 and 25, where the legacy is postponed to the latter age: *Re Breeds*, 1 Ch. D. 228.

Not available between 21 and 25.

Independently of the Act, and where no other provision exists, maintenance may be given where the property is given by a parent, though the gift be contingent: *Harvey v. Harvey*, 2 P. W. 21; *Hearle v. Greenbank*, 3 Atk. 716; *Wynch v. Wynch*, 1 Cox, 433; *Brown v. Temperley*,

Rule as to legacy to a child.

3 Russ. 263 ; *Incedon v. Northcote*, 3 Atk. 432 ; *Crickett v. Dolby*, 3 Ves. 13 ; *Donovan v. Needham*, 9 Bea. 164 ; *Mostyn v. Mostyn*, W. N. 1878, 180.

Or by a person *in loco parentis* : *Re Cotton*, 1 Ch. D. 232 ; *Re George*, 5 Ch. D. 837.

Grand-children.

But grandchildren are not within the benefit of this rule : *Festing v. Allen*, 5 Ha. 579, and cases cited ; *Roper*, Leg. 224.

Child must be entitled to income.

Where the gift is contingent on attaining 21, the Court will not, even since Lord Cranworth's Act, give maintenance, unless the income also would belong to the infant on attaining that age : *Re George*, 5 Ch. D. 837.

Where maintenance given by the Court out of contingent legacies.

Where the Court is administering the estate of the parent, it will, when the contingencies are equal and the adult children, if any, consent, apply the income of the presumptive shares of the infant children for their maintenance : *Evans v. Massey*, 1 Y. & J. 196 ; *Marshall v. Holloway*, 2 Swans. 436 ; *Cavendish v. Mercer*, 5 Ves. 195 n. ; *Cannings v. Flower*, 7 Sim. 523 ; *Re Breeds*, 1 Ch. D. 228.

Not if given over to persons not *in esse*.

If there are remainders over under which people not in being may take, it is not enough that all the persons *in esse* who are presumptively entitled are before the Court and consent : *Marshall v. Holloway*, *supra* ; *Exp. Keble*, 11 Ves. 606 ; *Turner v. Turner*, 4 Sim. 430 ; *Parsons v. Coke*, 10 W. R. 641 ; *Re Arbuckle*, 14 W. R. 535.

Nor if unborn children entitled.

Nor where the class may be increased by children coming into existence : *Exp. Keble*, *supra* ; *Lomax v. Lomax*, 11 Ves. 48.

Trustees not to act under similar rule.

The application of the income in the manner specified is not open to trustees ; the rule being a rule of the Court, inapplicable where the estate is not under administration : *Re Breeds*, 1 Ch. D. 228.

If intention expressed interest applicable for maintenance.

Where a future legacy is given to an infant, though not a child, or one to whom the testator was *in loco parentis*, with words showing that it was intended for the support of the infant, interest by way of maintenance may be provided out of it : *Pett v. Fellows*, 1 Swans. 561 ; *Leslie*

v. *Leslie*, Ll. & G. (Sugd.) 1; *Boddy v. Dawes*, 1 Keen, 362; and see *Lambert v. Parker*, G. Coop. 143.

Though the provision for maintenance does not extend over the entire period of minority, it may still be given by way of interest until majority: *Lambert v. Parker*, *supra*; *Chambers v. Goldwin*, 11 Ves. 1; *Martin v. Martin*, 1 Eq. 369.

Where maintenance given till age less than 21.

The indulgence to children of the testator is extended even to the case where there is a direction to accumulate: *Mole v. Mole*, 1 Dick. 310; *McDermott v. Kealy*, 3 Russ. 264 n.; *Stretch v. Watkins*, 1 Madd. 253; *Evans v. Massey*, 1 Y. & J. 196; unless the accumulations are given to another person: *Re George*, 5 Ch. D. 837.

Direction to accumulate not considered.

Even prior to Lord Cranworth's Act trustees were allowed sums paid out of the interest on a legacy given to the child, if his father was unable to maintain him, without the consent of the remaindermen, provided the case was one in which the Court would have given maintenance: *Sisson v. Shaw*, 9 Ves. 288; *Maberly v. Turton*, 14 Ves. 499; *Prince v. Hine*, 26 Bea. 634.

Where trustee may allow maintenance without power.

A discretion in trustees to apply maintenance, notwithstanding the father's ability to maintain his children, will not be controlled by the Court, as they may pay it to the father: *Brophy v. Bellamy*, 8 Ch. 798.

Discretion notwithstanding father's ability.

But where the father alleges himself to be unable to support his child, the Court directs an inquiry as to his ability: *Thompson v. Griffin*, Cr. & Ph. 317.

Inquiry as to ability;

And where trustees have a mere *power* of maintenance under a settlement, the father of the children cannot compel them to exercise it by payment to him or otherwise: *Ibid.*; *Ransome v. Burgess*, 3 Eq. 780.

where a power is given;

But if there is a *trust* for maintenance in a marriage settlement it is held that the father contracted that it should be exercised, and that it must be performed without regard to his ability: *Mundy v. Howe*, 4 B. C. C. 224; *Meacher v. Young*, 2 M. & K. 490; *Stocken v. Stocken*, 4 Sim. 152; 4 M. & Cr. 95; *Ransome v. Burgess*, 3 Eq. 780; *secus* in the case of a purely

where a trust is constituted.

voluntary settlement: *Re Kerrison*, 12 Eq. 422; and see *Joyce v. Cottrell*, 12 Eq. 566, 569.

Extent of inquiry.

In cases where the claim for maintenance is grounded on the father's inability, it is unnecessary to show anything like insolvency, but the order will be made on its being shown that he is unable to bring up his children and give them such an education as their position and fortune require: *Buckworth v. Buckworth*, 1 Cox, 80; *Jervoise v. Silk*, G. Coop. 52. For the form of inquiry see Seton, p. 710.

After removal from father's custody.

When the Court has removed the children from the custody of the father, it does not resort to his property for their maintenance: *Wellesley v. Beaufort*, 2 Russ. 29.

It seems that a father is not entitled as a matter of right to past maintenance: *Hill v. Chapman*, 2 B. C. C. 231; but see *Maberly v. Turton*, 14 Ves. 500. The Court will, however, allow past maintenance under circumstances showing that the infants would be benefited by such allowance: *Maberly v. Turton*, 14 Ves. 499; *Davey v. Ward*, 7 Ch. D. 762.

Widow's ability.

A reference as to the ability to maintain the children is dispensed with on making an allowance to the mother during widowhood: *Exp. Petre*, 7 Ves. 403; *Hodgens v. Hodgens*, 4 Cl. & F. 323; *Douglas v. Andrews*, 12 Bea. 310.

Or after a second marriage: *Billingsley v. Critchet*, 1 B. C. C. 268.

As to the right of the mother to be recouped past maintenance, see *Nottley v. Palmer*, 11 Jur. N. S. 968; *Joyce v. Cottrell*, 12 Eq. 569.

Exercise of discretionary power.

A discretion in trustees to apply funds for maintenance will not be interfered with by the Court so long as it is exercised according to a sound and honest judgment, which fact the Court will determine in an administration suit, and will possibly require the trustee to exercise the discretion under the view of the Court: *Costabadie v. Costabadie*, 6 Ha. 414; *Davey v. Ward*, 7 Ch. D. 754.

After pro-

But the discretion is not gone by the institution of an

action even by the trustees themselves: *Sillibourne v. Newport*, 1 K. & J. 602. ceedings begun.

Payment of the fund into Court under the Trustee Relief Act is a renunciation by the trustees of their power: *Re Coe*, 4 K. & J. 203. Payment into Court.

And payments made by them after action brought may be allowed to them upon clear evidence that the discretion was exercised *bonâ fide*: *Sillibourne v. Newport*, *supra*; *Talbot v. Marshfield*, 4 Eq. 661.

But the expense of proving the payments to be proper will have to be borne by the trustees in any event: *Talbot v. Marshfield*, *supra*. Costs.

The High Court will not interfere with the action of a Court of co-ordinate jurisdiction (*e.g.*, the Palatine Court) in the exercise of its discretion in allowing maintenance: *Re Alison*, 8 Ch. D. 1. Control over other Courts.

An implied trust arising from a gift to a widow for the support of herself and her children is limited to such children as require support: *Carr v. Living*, 28 Bea. 647. Widow's implied trust to maintain self and children.

And a daughter living with her mother was held to be entitled though adult: *Carr v. Living*, 30 Bea. 474; *Scott v. Key*, 35 Bea. 291. Daughter living with mother.

Under such a trust sons may also be in a position to require maintenance though adult: *Berry v. Briant*, 2 Dr. & Sm. 1. Adult sons.

As to the maintenance of persons of weak mind, see *Duncombe v. Nelson*, 9 Bea. 211. Non compos.

The state and condition of the family must regulate the amount of maintenance to be allowed: *Heysham v. Heysham*, 1 Cox, 179; *Allen v. Coster*, 1 Bea. 202. Amount allowed.

And the allowance may be increased to enable the children to support their parents: *Allen v. Coster*, *supra*. Discretion to increase.

A discretion to apply income for "maintenance or support" extends to expenses of education: *Re Breeds*, 1 Ch. D. 228.

Whether in cases not coming within Lord Cranworth's Act, and without the usual power for that purpose, trustees are justified in resorting to income which has been accu- Power to apply past income.

mulated, for maintenance in future years : see *Edwards v. Grove*, 2 D. F. & J. 221.

Mode of obtaining opinion of Court.

Questions as to the duty of trustees with reference to maintenance may be submitted to the Court upon an advice petition under 22 & 23 Vict. c. 35, s. 30, see *ante*, p. 109.

Account of part maintenance.

So much only as has been expended is allowed in taking an account of past maintenance, though that may be less than the income of the child's fortune : *Bruin v. Knott*, 1 Ph. 572.

Not by person who from kindness maintained children.

And maintenance by a stranger from feelings of kindness is not recoverable : *Grove v. Price*, 26 Bea. 107 ; *Worthington v. McCraer*, 23 Bea. 83 ; and see *Joyce v. Cottrell*, 12 Eq. 569.

Maintenance out of capital by Court ;

The Court will, in a proper case, where the fund is a small one, order payment out of capital of sums which the income applicable to maintenance is insufficient to bear : *Barlow v. Grant*, 1 Vern. 254 ; *Franklin v. Green*, 2 Vern. 136 ; *Exp. Chambers*, 1 R. & M. 577 ; *Bridge v. Brown*, 2 Y. & C. C. C. 181 ; *Davies v. Davies*, 2 D. M. & G. 53 ; *Nottley v. Palmer*, 11 Jur. N. S. 968.

by trustees.

But trustees should not so apply capital without the sanction of the Court : *Davies v. Austen*, 1 Ves. Jun. 247 ; *Walker v. Wetherell*, 6 Ves. 473 ; cases in n. (1) to *Barlow v. Grant*, *supra*.

Inquiry.

The Court may, however, in the absence of opposition, sanction the outlay, with an inquiry as to its application : *Prince v. Hine*, 26 Bea. 634 ; *Robison v. Killey*, 30 Bea. 520.

Charge on land for past maintenance.

The Court has, without action, raised sums due for past maintenance by means of a charge on an infant's fee simple : *Re Howarth*, 8 Ch. 415 ; *Re Allen*, cited *Ibid.*, p. 417, n. (5).

On infant's reversion.

Also upon an infant's reversionary property, coupled with a life insurance by way of collateral security : *De Witte v. Palin*, 14 Eq. 251.

Where two trusts applicable

An infant entitled to maintenance out of two different funds should be supported out of the fund which it is

most for his benefit to apply for the purpose : *Foljambe v. Willoughby*, 2 S. & S. 169 ; *Martin v. Martin*, 1 Eq. 369 ; *Lucas v. King*, 11 W. R. 818 ; and the same principle is followed in the case of lunatics : *Methold v. Turner*, 4 De G. & Sm. 249 ; *Re Ashley*, 1 R. & M. 371 ; *Gisborne v. Gisborne*, 2 App. Ca. 300.

to main-  
tenance.

Thus if the infant have a defeasible interest and an absolute one, maintenance should be provided out of the former : *Bruin v. Knott*, 1 Ph. 575.

Defeasible  
and abso-  
lute in-  
terests.

And if he have been maintained out of one fund, whereas he should have been maintained out of another, he is entitled to be recouped out of the past income of the latter fund : *Furley v. Hyder*, 41 L. J. Ch. 583 ; and see *Lucas v. King*, *supra*.

Recouping  
fund  
wrongly  
chosen.

But if a discretion is given to pay maintenance out of either of the two funds, the Court will not interfere with the exercise of that discretion : *Gisborne v. Gisborne*, 2 App. Ca. 300.

Discretion  
as to choice  
of fund.

Children who have been maintained under a trust for that purpose cannot obtain an account of the income so applied, in the absence of special circumstances, or of an allegation that they have not been properly maintained : *Hora v. Hora*, 33 Bea. 88 ; and see *Hadow v. Hadow*, 9 Sim. 438 ; *Browne v. Paull*, 1 Sim. N. S. 92 ; *Jodrell v. Jodrell*, 14 Bea. 397.

Trustees  
need not  
account as  
to applica-  
tion of  
mainte-  
nance-  
money.

A discretionary trust for the maintenance of a person during his life will enure to the benefit of his trustee in bankruptcy, unless there is a gift over on bankruptcy : *Snowdon v. Dales*, 6 Sim. 524 ; *Piercy v. Roberts*, 1 M. & K. 4 ; *Younghusband v. Gisborne*, 1 Coll. 401 ; *Re Coe*, 4 K. & J. 199.

Mainte-  
nance of  
life-tenant  
after bank-  
ruptcy.

Where there is a discretionary trust for the maintenance of the bankrupt, his wife and children, the bankruptcy trustee has no title : *Twopeny v. Peyton*, 10 Sim. 487 ; *Godden v. Crowhurst*, *ibid.* 642 ; but see as to these cases, Davidson Prec., Vol. 3, Pt. I., p. 125 *et seq.*

But if this discretion is vested in the trustees after the bankruptcy of the husband, the family will be entitled to

such maintenance as may be determined upon an inquiry, the remainder going to the creditors : *Page v. Way*, 3 Bea. 20 ; *Kearsley v. Woodcock*, 3 Hare, 185 ; *Wallace v. Anderson*, 16 Bea. 533 ; but see *Rippon v. Norton*, 2 Bea. 63, in which the family and the creditors were held entitled in equal shares.

But the Court will not interfere with an alternative discretion to provide either for the bankrupt or his family : *Lord v. Bunn*, 2 Y. & C. C. C. 98 ; *Holmes v. Penney*, 3 K. & J. 90.

## II.—*Advancement.*

Trustees having no power should apply to Court.

Where no trust for advancement is reposed in the trustees, they should not apply any capital or other sums for that purpose without the sanction of the Court, which may be readily obtained upon a petition for the opinion of the Court : see p. 108 as to Advice Petitions.

Where allowed, though no power.

But where they have so applied funds they will be allowed them, if the case was one in which the Court would have made an order for the purpose : *Franklin v. Green*, 2 Vern. 137 ; and see *Lee v. Brown*, 4 Ves. 362.

Out of contingent interests.

And out of interests upon contingencies which are equal, advancement out of capital may be given with the proper consents under the same conditions as maintenance is given in similar circumstances : see *ante*, p. 176.

Power ceasing at majority.

A power to advance to a child, "being a minor," is strictly construed and ceases at majority : *Clarke v. Hogg*, 19 W. R. 617.

Advancement to adults.

But a general direction will include advancement to an adult at any age before the funds fall into possession : *Roper-Curzon v. Roper-Curzon*, 11 Eq. 452 ; *Lowther v. Bentinck*, 19 Eq. 166.

Thus the Court has allowed advancement for the payment of the debts of a man who had been married for 30 years, the fund being applicable for certain purposes, "or otherwise for his benefit" : *Lowther v. Bentinck*, 19 Eq. 166.

And capital has been advanced to a married man to



maintain him, pending his establishment in a profession, a settlement of it being at the same time ordered: *Roper-Curzon v. Roper-Curzon*, 11 Eq. 452.

And a husband has been advanced out of his wife's fund, which was subject to a power of advancement in favour of the wife, to establish her in trade, or otherwise for her preferment or advancement, to enable him to enter a beneficial partnership, upon an insurance being effected in the names of two trustees, the policy to be held upon the trusts of the legacy, the husband's bond being taken to secure the premiums: *Phillips v. Phillips*, Kay, 40; or, under special circumstances, on the husband's personal security alone: *Re Kershaw*, 6 Eq. 322.

A married woman has been set up in a farming business, the husband covenanting that the business should enure to her separate use: *Talbot v. Marshfield*, 3 Ch. 622.

But her money cannot be advanced for the purpose of paying her husband's debts: *Ibid.*

Though the parent is not to be benefited at the expense of the child by a colourable advancement, he may in a proper case, as where he intends to emigrate with his family, and such a course seems beneficial to the child, obtain payment of advancement funds: *Walsh v. Walsh*, 1 Dr. 64; *Re Long*, 38 L. J. Ch. 125; and see *Exp. Hays*, 3 De G. & Sm. 485, 488.

Assisting parent by advancement of child.

Or to prevent his insolvency, where the debt has been incurred by him for the maintenance of his children: *Davey v. Ward*, 7 Ch. D. 754.

To prevent father's insolvency.

Part of the trust funds have been allowed to be paid to a daughter on her marriage, under a power enabling the trustees to raise money to place her in business, where the outlay appeared to be for her advancement in life: *Lloyd v. Cocker*, 27 Bea. 645.

To daughter on marriage.

And arrears of rent have been cleared for a beneficiary, though without an adequate power: *Exp. McKey*, 1 B. & B. 405.

To save property.

Where an additional sum is required for education, it

Education.

may be provided under a power of advancement: *Re Breeds*, 1 Ch. D. 228.

“Advance”  
under  
Statute of  
Distribu-  
tions.

As to what is considered as an “advance” within the meaning of the Statute of Distributions (22 & 23 Car. 2, c. 10, s. 5), see *Auster v. Powell*, 1 D. J. & Sm. 99, 106; *Boyd v. Boyd*, 4 Eq. 305; *Taylor v. Taylor*, 20 Eq. 155; *Hatfeild v. Minet*, 8 Ch. D. 136.

Failure of  
object of  
advance-  
ment.

If the purpose for which the gift is made be specified, but fails either by the impossibility of effecting it, by the neglect of the trustee, or by the death of the beneficiary, the advancement fund belongs to the beneficiary or his representatives: *Barlow v. Grant*, 1 Vern. 255; *Barton v. Cooke*, 5 Ves. 461; *Leche v. Kilmorey*, T. & R. 207; *Re Sanderson*, 3 K. & J. 503; *Palmer v. Flower*, 13 Eq. 250.

Death of  
child.

Thus, if the child is to be advanced by being apprenticed, and dies before it can be done, the advancement fund goes to his representatives: *Barlow v. Grant*, 1 Vern. 255.

Omission  
to advance.

And if he is old enough, but has not been apprenticed, he takes the fund himself: *Barton v. Cooke*, 5 Ves. 461.

Purpose  
becoming  
impossible.

Where, under a will, the money had been raised to buy a commission, but purchase in the army was in the meantime abolished, the money was held to belong to the person intended to be advanced: *Palmer v. Flower*, 13 Eq. 250; or where he was prevented by ill health from entering the army: *Leche v. Kilmorey*, T. & R. 207.

But where the trust arose in a separation deed by express words directing the purchase of a commission, and failed for the above reason, the fund was not applied at all: *Re Ward*, 7 Ch. 729.

Where money is given on condition that “an advantageous establishment” for the legatee is found, the gift fails if the trustee does not find such an establishment: *Pink v. De Thuissey*, 2 Madd. 157.

Legacy for  
education  
is payable  
imme-  
diately.

A legacy given upon trust to apply a sum for education must be taken to be a general legacy, and payable immediately: *Noel v. Jones*, 16 Sim. 311.

If the concurrence of both trustees is required for the exercise of a discretion to advance, one trustee must not act alone, and if he does, he will not be allowed the advances : *Palmer v. Wakefield*, 3 Bea. 227. One trustee acting without the other.

But such a discretion vests in the survivor : *Livesey v. Harding*, Tambl. 463. Power survives.

Where the trustees have not exercised the power, the Court will undertake it : *Kilvington v. Gray*, 10 Sim. 293 : and see *Foley v. Parry*, 5 Sim. 138, 2 M. & K. 138. Discretion unexercised undertaken by Court.

And an inquiry as to the necessity of the case will be ordered : *Lewis v. Lewis*, 1 Cox, 162 ; *Robinson v. Cleator*, 15 Ves. 526 ; *Re Sanderson*, 3 K. & J. 497. Inquiry.

If a sum raised for advancement be applied in a manner not strictly for the infant's benefit, it may be recovered back from the trustee : *Simpson v. Brown*, 13 W. R. 312. Recovery of misapplied funds.

If a fixed sum for advancement be mentioned, it seems that, if more be advanced, the excess may be made up out of income not required for maintenance : *Therry v. Henderson*, 15 L. T. 452. Where too much raised.

## CHAPTER XXIV.

### OF PURCHASES OF THE TRUST ESTATE BY THE TRUSTEE.

Trustees may not buy the trust estate unless their trust is at an end, and the transaction is fair and open.

THERE is no rule of the Court that trustees may not purchase from their *cestui que trust*; the rule is that trustees may not purchase from themselves. Therefore, so long as the relation of trustee and *cestui que trust* is not finally put an end to by a new contract severing that relation, such a purchase is not allowed to stand. Moreover, if the trustee have used knowledge acquired in, or at the expense of, the trust, and have not disclosed it to the *cestui que trust*, the purchase is voidable at the option of the latter: *Fox v. Mackreth*, 2 B. C. C. 400, 2 Cox, 320, 4 B. P. C. 258; *Exp. Lacey*, 6 Ves. 625; *Exp. Bennett*, 10 Ves. 394; *Hamilton v. Wright*, 9 Cl. & F. 111; *Aberdeen Railway Co. v. Blakie*, 1 Macq. 461; *Pooley v. Quilter*, 2 D. & J. 327, 351; and see *McPherson v. Watt*, 3 App. Ca. 254.

Purchase at an auction.

A trustee gains no better title by having purchased at an auction: *Sanderson v. Walker*, 13 Ves. 602.

Bidding by agent.

Or by having bid through an agent for him: *Whelpdale v. Cookson*, 1 Ves. Sen. 9; *Sanderson v. Walker*, *supra*.

Purchase by agent.

Nor can an agent of a trustee buy the trust estate by private contract: *Whitcomb v. Minchin*, 5 Madd. 91; *Woodhouse v. Meredith*, 1 J. & W. 204.

Trustee buying as agent for stranger.

Nor can a trustee purchase as agent for a stranger, unless the *cestui que trust* has full knowledge of, and approves the transaction: *Coles v. Trecothick*, 9 Ves. 234; *Exp. Bennett*, 10 Ves. 381.

Trustee beneficially interested.

But where a trustee for sale procured the purchase of

the property by the trustees of his marriage settlement, under which he took a contingent reversionary interest, the purchase was upheld as not coming within the rule, all things having been done in the fairest manner: *Hickley v. Hickley*, 2 Ch. D. 190.

A purchase by a trustee from his co-trustee is within the rule: *Hall v. Noyes*, 3 Ves. 748, cit.; and see *Hodgkinson v. National Live Stock Co.*, 4 D. & J. 422.

Purchase from co-trustees.

A collusive purchase from trustees makes the purchasers trustees for the original *cestuis que trust*; and if, as ostensible owners, the purchasers obtain a valuable right in respect of the land so bought, they must surrender that right for the benefit of those *cestuis que trust*: *Aberdeen Town Council v. Aberdeen University*, 2 App. Ca. 544.

Collusive purchase from trustees.

The character of trustee cannot be thrown off merely for the purpose of purchasing the estate: *Spring v. Pride*, 4 D. J. & Sm. 395; where the trustee was colourably discharged by deed of even date with the conveyance to the purchaser.

Trustee cannot get rid of trust in order to buy.

Nor will the device of taking the conveyance to his children avail: *Gregory v. Gregory*, G. Coop. 201; see *Huguenin v. Baseley*, 14 Ves. 289.

Conveyance in name of children;

Nor in the name of a trustee for himself: *Barton v. Hassard*, 3 Dr. & War. 461; *Randall v. Errington*, 10 Ves. 428; *Sanderson v. Walker*, 13 Ves. 601.

of a trustee.

But if a trustee sells *bonâ fide*, and afterwards himself purchases from the purchaser, the rule does not apply: *Baker v. Peck*, 9 W. R. 472; and see *Parker v. McKenna*, 10 Ch. 125.

Purchase after *bonâ fide* sale;

Even in the case of a re-purchase by a trustee for creditors, the transaction, being one to which all parties interested consented, was upheld: *Dover v. Buck*, 5 Gif. 57.

by trustee for creditors.

A disclaiming trustee who has never acted is not within the rule, even though he have not disclaimed by deed: *Stacey v. Elph*, 1 M. & K. 195.

Disclaiming trustee may buy.

Nor is a trustee to preserve contingent remainders and for no other purpose: *Parkes v. White*, 11 Ves. 226; *Pooley v. Quilter*, 4 Dr. 189.

Trustee to preserve.

Bare trustee.

Nor is a bare trustee : *Pooley v. Quilter*, 4 Dr. *supra*.

Trustee purchasing reversionary interest.

Where a trustee purchases from his *cestui que trust* a reversionary interest which he is himself liable to pay, the purchase will perhaps be allowed to stand, if it can be shown that it was for the best advantage of the *cestui que trust* : *Denton v. Donner*, 23 Bea. 285, 290 ; and see *Spring v. Pride*, 4 D. J. & Sm. 395, 406.

Transactions not relating to trust.

The trusteeship of an estate does not prevent transactions between the trustee and *cestui que trust* foreign to the trust : *Knight v. Marjoribanks*, 2 McN. & G. 10.

Transaction when trust closed must be fair.

In the case of a purchase of the trust estate, though the character of trustee may be at an end, the transaction must be marked by the strictest honesty and open dealing : *Gibson v. Jeyes*, 6 Ves. 266 ; *Parkes v. White*, 11 Ves. 226 ; and see *Tate v. Williamson*, 2 Ch. 55.

Onus where beneficiary suggests sale.

But the onus of proving fairness is removed from the trustee where the *cestui que trust*, being *sui juris*, suggests the sale to him and threatens to force it upon him, the trustee being an unwilling purchaser : *Luff v. Lord*, 34 Bea. 220.

Relation to be severed by beneficiary himself.

In order to sever the fiduciary relation the *cestui que trust* himself, and not his solicitor for him, must make the new contract for that purpose : *Downes v. Grazebrook*, 3 Mer. 209.

Feme covert must acknowledge.

Married women selling their land to their trustees must acknowledge the deed ; for, if not, their interest can be got back if they survive their husbands : *Franks v. Bollans*, 3 Ch. 717.

Purchase from persons under disability with leave of Court.

If the *cestui que trust* be under any disability to contract, the trustee can buy the trust estate only with the leave of the Court ; and he must show that he is willing to give an enhanced price : *Campbell v. Walker*, 5 Ves. 682 ; 13 Ves. 601.

Liberty to trustee to bid.

A trustee has been allowed to purchase at the reserved price after a failure to sell by auction, it appearing that such a course was beneficial to all parties : *Clarke v. Swaile*, 2 Ed. 134 ; *Farmer v. Dean*, 32 Bea. 327.

But liberty to bid at a sale by the Court is not given

to a trustee unless all parties consent, and all other chances of procuring biddings are exhausted: *Tenant v. Trenchard*, 4 Ch. 547; and see *Exp. James*, 8 Ves. 337.

Biddings will be opened where fraud or improper conduct has been proved: *Delves v. Delves*, 20 Eq. 77, 82. And this will not be prevented by the operation of the Sale of Land by Auction Act, 1867 (30 & 31 Vict. c. 48, s. 7): *Guest v. Smythe*, 5 Ch. 551.

Biddings opened in case of fraud.

Executors, executors *de leur tort*, and administrators are within the general rule: *Killick v. Flexney*, 4 B. C. C. 161; *Watson v. Toone*, 6 Madd. 153; *Mulvany v. Dillon*, 1 B. & B. 409; *Baker v. Carter*, 1 Y. & C. 250; *Baker v. Read*, 18 Bea. 398, S. C. 3 W. R. 118; and see *Smedley v. Varley*, 23 Bea. 358; *Wedderburn v. Wedderburn*, 4 M. & Cr. 41; *Watson v. Toone*, 6 Madd. 153.

Purchase by executors, &c.

But an executor cannot buy a legacy from a legatee, unless he can prove the fairness of the transaction, even if such legatee be his co-executor: *Re Biel*, 16 Eq. 577.

Purchase of legacy by executor.

But the case is not the same where the validity of the legatee's title is in litigation and unmarketable, in which case the executor, if he have fully informed the legatee of his rights, may purchase: *Luff v. Lord*, 34 Bea. 220.

### *Leases to Trustees, &c.*

A trustee must not lease the trust estate to himself; and even if the testator permits it by express provision, a trustee taking advantage of the provision should be removed: *Passingham v. Sherborn*, 9 Bea. 424; and see *Attorney-General v. Clarendon*, 17 Ves. 500; *Attorney-General v. Dixie*, 13 Ves. 519.

Trustee must not lease to himself.

It seems that a lease by a trustee to a relation is objectionable: *Ferraby v. Hobson*, 2 Ph. 255; *Exp. Skinner*, 2 Mer. 457.

Lease to relative of trustee.

An agent may take a lease of his principal's land, and keep it, if he has imparted all necessary information to his

Agent taking lease of

principal's land. lessor: *Selsey v. Rhoades*, 1 Bli. N. R. 1; *Molony v. Kernan*, 2 Dr. & War. 31; *Dunne v. English*, 18 Eq. 534.

Special agency for letting. But if an agent, appointed for the purpose of letting only, takes a lease to himself, he will be a trustee of it for his principal: *Taylor v. Salmon*, 4 M. & Cr. 134; and see *ante*, Chap. XI., Constructive Trusts, p. 72.

Lease to tenant for life. A tenant for life, with power of leasing, may obtain a lease in trust for himself: *Bevan v. Habgood*, 1 J. & H. 222.

### *Mortgagees.*

Application of rule to mortgagees; The rule as to purchases by trustees does not apply with equal stringency to every case between mortgagor and mortgagee: Sugd. V. & P. 689; *Webb v. Rorke*, 2 Sch. & L. 673; *Exp. Marsh*, 1 Madd. 148; *Dobson v. Land*, 8 Ha. 221; *Rushbrook v. Lawrence*, 8 Eq. 25, 5 Ch. 3.

with power of sale. But a mortgagee with a power of sale is unable to purchase: *Downes v. Grazebrook*, 3 Mer. 200; *Robertson v. Norris*, 1 Gif. 421; 4 Jur. N. S. 155.

Annuitant with power of sale. And an annuitant with power of sale is in the same position: *Re Bloye*, 1 Macn. & G. 488; S. C. in D. P., *nom. Lewis v. Hillman*, 3 H. L. C. 607.

Mortgagee buying equity of redemption. But a mortgagee may buy the equity of the redemption: *Knight v. Marjoribanks*, 2 Macn. & G. 10.

Where mortgagor distressed. However, if the mortgagor be in circumstances of distress, or pressure is exerted, the sale may be impeached: *Ford v. Olden*, 3 Eq. 463; *Prees v. Coke*, 6 Ch. 645.

And a solicitor, who is a mortgagee, attempting to buy the equity of redemption from his client, was allowed only a charge for the amount paid, without power of sale: *Pearson v. Benson*, 28 Bea. 598.

Second mortgagee buying from first. A second mortgagee may, in the absence of special circumstances, buy under an exercise of the first mortgagee's power of sale: *Shaw v. Bunny*, 2 D. J. & Sm. 468; *Kirkwood v. Thompson*, *ibid.* 613.

Second The fact that a second mortgagee is a trustee for sale



does not prevent him from purchasing: *Ibid.*; *Locking v. Parker*, 8 Ch. 35. *Parkinson v. Hanbury*, 2 D. J. & Sm. 450, on this point, is not followed.

mortgagee trustee for sale.

With regard to opening a foreclosure, see *Prees v. Coke*, 6 Ch. 645, and cases there cited.

Opening foreclosure.

### *Agents and others.*

Agents are in a fiduciary relation to the extent that any fraud or concealment will vitiate any dealing on their own behalf while acting as such agents: *Lowther v. Lowther*, 13 Ves. 103; *Lewis v. Hillman*, 3 H. L. C. 607, 630; *Charter v. Trevelyan*, 11 Cl. & F. 714, 732; *Walsham v. Stainton*, 1 D. J. & Sm. 678; see *De Bussche v. Alt*, 8 Ch. D. 286.

Agent dealing for himself.

The burden is on the agent to prove that he gave distinct information to his principal as to the nature of his interest; it is not enough to say that the principal was sufficiently informed to be put upon his inquiry: *Lowther v. Lowther*, 13 Ves. 103; *Dunne v. English*, 18 Eq. 524; and see *Murphy v. O'Shea*, 2 J. & L. 422; *Fawcett v. Whitehouse*, 1 R. & M. 132; *Hichens v. Congreve*, *ibid.* 150 n.; *Imperial Mercantile Credit Association v. Coleman*, L. R. 6 H. L. 201; *Kimber v. Barber*, 8 Ch. 56; *Parker v. McKenna*, 10 Ch. 118; *Hay's Case*, *ibid.* 593; *McKay's Case*, 2 Ch. D. 1.

Onus on agent to prove *bona fides*.

Full value given must also be proved as an element of *bona fides*: *Murphy v. O'Shea*, 2 J. & L. 422; *Lowther v. Lowther*, 13 Ves. 103.

Adequacy of consideration.

The agent becomes a trustee of any undue profit obtained: *Lees v. Nuttall*, 1 R. & M. 53.

Undue profit.

As to an agent selling his own goods to his principal, see Story on Agency, p. 324 *et seq.*; Benjamin on Sales, p. 172 *et seq.*

Selling own goods to principal.

When the agency is terminated by a *bona fide* sale to a stranger there is nothing to prevent a subsequent purchase from the stranger by the late agent, but the transaction is not free from suspicion: *Parker v. McKenna*, 10 Ch. 126.

Termination of agency.

**Receiver buying in-cumbrance.** A receiver cannot buy up an annuity charged on the estate, except subject to the same rules as other persons in a fiduciary position may purchase: *Eyre v. McDonnell*, 15 Ir. Ch. R. 534, 548; and see *Alven v. Bond*, Fl. & K. 196; *Cary v. Cary*, 2 Sch. & L. 173.

Nor can he buy a jointure charge: *Boddington v. Langford*, 15 Ir. Ch. R. 558 n.

**Execution creditor.** An execution creditor may buy his debtor's property: *Stratford v. Twynam*, Jac. 421; and see *Waters v. Groom*, 11 C. & F. 684.

**Partner.** A partner may buy the share of his deceased partner, if the sale be fairly and properly made: *Chambers v. Howell*, 11 Bea. 6.

But a partner cannot purchase his bankrupt partner's share without leave: *Exp. Burnell*, 7 Jur. 116.

And on a sale by the Court of partnership property upon a dissolution, leave to bid is given only to such partners as have not the conduct of the sale: *Wild v. Milne*, 26 Bea. 506.

**Trustees for creditors.** Trustees for creditors under deeds or in bankruptcy are debarred from purchasing debts, assets, or dividends: *Exp. Lacey*, 6 Ves. 625; *Exp. Hughes*, *ibid.* 617; *Exp. James*, 8 Ves. 337; *Exp. Badcock*, M. & Mac. 231; *Pooley v. Quilter*, 2 D. & J. 327; *Adams v. Sworder*, 2 D. J. & S. 44.

**Assent of creditors.** In order to give validity to any such transaction the whole body of creditors must assent: *Exp. Lacey*, *supra*; dissenting from *Whelpdale v. Cookson*, 1 Ves. Sen. 9; but see *Exp. Gore*, 3 M. D. & D. 77; *Exp. Perkes*, *ibid.* 385; *Exp. Holyman*, 8 Jur. 156.

**Jurisdiction in bankruptcy.** In such matters the Chancery Division, though retaining its powers, has refused to adjudicate, and has left the Court of Bankruptcy to use its statutory jurisdiction: *Stone v. Thomas*, 5 Ch. 219; *Martin v. Powning*, 4 Ch. 356; but see *White v. Simmons*, 6 Ch. 555; *Jenney v. Bell*, 2 Ch. D. 547.

**Tenant for life with power to** A tenant for life with power to consent to a sale or exchange by his trustees may himself become the pur-

chaser, since he is in no fiduciary relation to the remainderman : *Howard v. Ducane*, T. & R. 81 ; *Grover v. Hugell*, 3 Russ. 432 ; *Dicconson v. Talbot*, 6 Ch. 32. consent to sale.

As to whether the tenant for life is in such a position as that he is bound to communicate his knowledge to the trustees : See *Dicconson v. Talbot*, *supra*.

Guardians probably cannot buy their wards' estate on their coming of age, though a full price be given : Sugd. V. & P. 692, citing *Oldin v. Samborn*, 2 Atk. 15 ; *Dawson v. Massey*, 1 B. & B. 219 ; but see *Grosvenor v. Sherratt*, 28 Bea. 659. Guardians.

### *Solicitors.*

A solicitor buying from his client can never support the transaction, unless he can prove that his diligence to do the best for the vendor has been as great as if he was only an attorney dealing for that vendor with a stranger : *Gibson v. Jeyes*, 6 Ves. 271 ; *Savery v. King*, 5 H. L. C. 655 ; *Spencer v. Topham*, 22 Bea. 577 ; *Denton v. Donner*, 23 Bea. 285 ; *Gresley v. Mousley*, 4 D. & J. 78 ; *Morgan v. Minett*, 6 Ch. D. 638 ; *McPherson v. Watt*, 3 App. Ca. 254. Purchase by solicitor.

But if the solicitor obtains an advantage by accidental or unforeseen circumstances only, that is not to be taken as shewing that the transaction should not have taken place : *Montesquieu v. Sandys*, 18 Ves. 302 ; *Edwards v. Meyrick*, 2 Ha. 60. Accidental advantage.

The purchase will be set aside where the Court thinks that a better bargain for the *cestui que trust* or client ought to have been made : *Holman v. Loynes*, 4 D. M. & G. 270 ; *Gresley v. Mousley*, 4 D. & J. 78 ; *Pisani v. Attorney-General for Gibraltar*, L. R. 5 P. C. 517, 538 ; *Spencer v. Topham*, 22 Bea. 573. Inadequate value.

The indebtedness of the client to his solicitor is also a circumstance of suspicion : *Holman v. Loynes*, *supra* ; *Edwards v. Meyrick*, 2 Hare, 70 ; as to future costs see now Solicitor's Act, 1870, 33 & 34 Vict., c. 28, s. 4. Client debtor to solicitor.

Mortgage  
to secure  
costs.

There is no impropriety in a mortgage to secure costs : *Johnson v. Fesemeyer*, 3 D. & J. 13.

Employ-  
ment "*in*  
*hac re*."

The solicitor must be employed "*in hac re*" in order to bring him within the rule: *Montesquieu v. Sandys*, 18 Ves. 313; *Edwards v. Meyrick*, 2 Ha. 60; *Jones v. Thomas*, 2 Y. & C. Ex. 498.

This is explained to mean that a solicitor may deal with his client where the circumstances are not such as to put him under the duty of advising the client: *Holman v. Loynes*, 4 D. M. & G. 281; and see *Gibbs v. Daniel*, 4 Giff. 36.

No separate  
advice.

And the absence of separate advice is a circumstance which makes the task of the solicitor to prove fairness more difficult: *Gresley v. Mousley*, 4 D. & J. 96; *Pisani v. Attorney-General for Gibraltar*, 5 P. C. 517.

But the mere fact that the purchaser is a solicitor dealing with a layman, without separate advice, is no ground for setting aside the sale: *Edwards v. Williams*, 32 L. J. Ch. 763.

Cesser of  
relation of  
solicitor  
and client.

Where the relation of solicitor and client does not, or has ceased to, exist, the parties are treated as having dealt at arm's length, if information obtained while acting as solicitor does not give the solicitor an unfair advantage: *Cane v. Allen*, 2 Dow. 289; *Cutts v. Salmon*, 4 D. G. & Sm. 125; and see the cases cited in *Holman v. Loynes*, *supra*; and in *Pisani v. Attorney-General*, *supra*; *Morgan v. Minett*, 6 Ch. D. 638.

Selling to  
another  
client.

The onus is heavy on a solicitor selling one client's property to another, to show the greatest fairness: *Hesse v. Briant*, 6 D. M. & G. 623; and see *Exp. Bennett*, 10 Ves. 400.

Proof of  
payment.

The solicitor must prove by other evidence than the mere endorsement of the receipt on the conveyance, that he has paid the whole consideration: *Gresley v. Mousley*, 3 D. F. & J. 433.

Gifts to  
solicitors.

As to gifts to solicitors, see *Tomson v. Judge*, 3 Dr. 306, and the cases collected in 2 W. & T. L. C. in note to *Huguenin v. Basely*, p. 578.

A solicitor having the conduct of a sale by the Court, cannot buy: *Owen v. Foulkes*, 6 Ves. 630 n.; *Sidny v. Ranger*, 12 Sim. 118; *Atkins v. Delmege*, 12 Ir. Eq. R. 1; *Re Ronayne*, 13 Ir. Ch. R. 444; *Guest v. Smythe*, 5 Ch. 556.

Solicitor with conduct of sale.

### Counsel.

Barristers are subject to the rule that, unless their employment has ceased, purchases of property as to which they have advised may be set aside; and even after that, their conduct must be perfectly fair and open: *Carter v. Palmer*, 8 Cl. & F. 657; *Pisani v. Attorney-General for Gibraltar*, 5 P. C. 540.

Purchases by counsel.

With regard to gifts to counsel, see *Broun v. Kennedy*, 4 D. J. & Sm. 217.

Gifts to counsel.

### Recovery of Trust Estate.

The Court assists the *cestui que trust* to recover the estate or its value in the following manner:—

*Cestui que trust's* remedy.

1. If the estate has not been resold by the trustee—

Where estate not resold.

(1.) The sale may, at the option of the *cestui que trust*, be merely set aside, and an immediate reconveyance ordered: *Exp. Lacey*, 6 Ves. 625; *York Buildings Co. v. Mackenzie*, 8 B. P. C. 42; *Exp. Bennett*, 10 Ves. 400; *Randall v. Errington*, 10 Ves. 423; *Trevelyan v. Charter*, 9 Bea. 140.

Reconveyance.

(2.) The trustee must account for the mesne rents and profits, or an occupation rent: *Exp. Lacey, supra*; *Exp. James*, 8 Ves. 351; *York Buildings Co. v. Mackenzie*, 8 B. P. C. 70.

Mesne profits.

No interest on the rents is claimable by the *cestui que trust*: *Macartney v. Blackwood*, Ridg. L. & S. 602.

No interest on rents.

(3.) The *cestui que trust* must repay the price, with interest at 4 per cent.: *Campbell v. Walker*, 5 Ves. 682; and see *Exp. James, supra*; *York Buildings Co. v. Mackenzie, supra*.

Repayment of price.

Also, sums paid for repairs and permanent improvements made by the trustee: *Exp. Hughes*, 6 Ves. 624;

Sums spent in repairs.

*Exp. James, supra* ; *Exp. Bennett*, 10 Ves. 400 ; *Robinson v. Ridley*, 6 Madd. 2 ; *Oliver v. Court*, 8 Price, 172 ; *York Buildings Co. v. Mackenzie, supra* ; *Davey v. Durrant*, 1 D. & J. 535.

Improve-  
ments.

These allowances are made for repairs, but none will be made for improvements in a case of gross fraud by the trustee in purchasing the property : *Baugh v. Price*, 1 Wils. 320 ; *Kenney v. Brown*, 3 Ridg. 518.

Injury.

The purchase-money to be repaid must be diminished if the trustee have injured the estate : *Exp. Bennett, supra*.

Resale.

2. If the *cestui que trust* prefer it, he may have the estate resold : *Fox v. Mackreth, supra* ; *Exp. James, supra* ; *Campbell v. Walker, supra* ; *Exp. Hughes*, 6 Ves. 625 ; *Exp. Bennett, supra*.

Mode of  
resale.

For this purpose the Court orders the property to be put up at the sum given by the trustee, plus the value of any improvements : but if no better price can be obtained, the original purchase will stand : *Lister v. Lister*, 6 Ves. 633 ; *Exp. Lacey, supra* ; *Exp. Hughes, supra* ; *Exp. James, supra* ; *Exp. Bennett*, 10 Ves. 400 ; *Robinson v. Ridley*, 6 Madd. 2 ; *Williamson v. Seaber*, 3 Y. & C. 717 ; *Stepney v. Biddulph*, 13 W. R. 576.

In lots.

*Cestuis que trust* cannot require a sale in lots if the trustee have purchased the estate *en bloc* : *Exp. James, supra*.

Subsisting  
tenancies.

The interests of lessees are allowed to remain unaffected by the reconveyance : *York Buildings Co. v. Mackenzie, supra*.

Deprecia-  
tion of  
securities.

If the price have been paid into Court, and invested, the trustee does not gain or lose by fluctuations in the value of the investment : *Exp. James*, 8 Ves. 351.

Where es-  
tate resold :  
purchaser  
with notice  
subject to  
equity.

3. If the estate has been resold to a purchaser with notice of the actual transaction, and that it was impeachable by the *cestui que trust*, he is subject to all the same consequences as the trustee himself would have incurred : *Attorney-General v. Dudley*, G. Coop. 146 ; *Dunbar v. Tredennick*, 2 B. & B. 304 ; and see the notes to *Basset v. Nosworthy*, 2 W. & T. L. C. p. 1.

The defendant in a suit for specific performance knowing the plaintiffs to be trustees, is not entitled under the new Orders (Order XXXI. r. 5) to interrogate as to the nature of such trusts, in order to show that the purchase was a breach of trust: *Mansfield v. Childerhouse*, 4 Ch. D. 82.

Discovery as to breach of trust.

4. If the estate have been resold to a purchaser without notice, the trustee is ordered to pay over the profit he made on the resale, with interest at 4 per cent.: *Hall v. Hallet*, 1 Cox, 134; and see *Exp. Reynolds*, 5 Ves. 707; *Randall v. Errington*, 10 Ves. 423.

Where resold to purchaser without notice:

In these cases it is not in the option of the *cestui que trust* to require any similar property obtainable to be purchased to replace the property sold, e.g., where the trustee had bought shares in a company: *Hall v. Hallet*, *supra*.

Replacement of property.

The trustee, except in a case where no blame can attach to his conduct, must pay the costs of the action: *Sanderson v. Walker*, 13 Ves. 601; *Crowe v. Ballard*, 3 B. C. C. 117; *Dunbar v. Tredennick*, 2 B. & B. 304; *Smedley v. Varley*, 23 Bea. 358.

Costs.

But the Court in its discretion refuses or gives costs to either party in particular circumstances of delay or acquiescence: *Attorney-General v. Dudley*, G. Coop. 146; *Gregory v. Gregory*, *ibid.* 201; *Champion v. Rigby*, 1 R. & My. 539.

Delay and acquiescence.

It seems that a receiver will not be appointed in the case of a breach of trust by trustees in purchasing the trust estate: *George v. Evans*, 4 Y. & C. 211.

Receiver.

### *Confirmation and Acquiescence.*

#### I. Confirmation by Act of the Parties.

If the *cestui que trust* is *sui juris* and cognisant of his rights, and of the invalidity of the transaction, there is nothing to prevent him from an express, *bonâ fide*, and binding confirmation of the purchase: *Campbell v. Walker*, 5 Ves. 682; *Morse v. Royal*, 12 Ves. 355;

Confirmation by *cestui que trust sui juris*.

*Dunbar v. Tredennick*, 2 B. & B. 317; *Roche v. O'Brien*, 1 B. & B. 330; *Chalmer v. Bradley*, 1 J. & W. 51; *Salmon v. Cutts*, 4 D. G. & S. 125, 16 Jur. 623; *Kempson v. Ashbee*, 10 Ch. 15, 20.

Knowledge  
of *cestui*  
*que trust*.

It is necessary for the trustee to give every information to the confirming *cestui que trust*: *Life Association of Scotland v. Siddal*, 3 De G. F. & J. 74; *Baugh v. Price*, 1 G. Wils. 320; *Morse v. Royal*, *supra*; *Roche v. O'Brien*, *supra*.

Confirma-  
tion must  
be distinct  
act.

The confirmatory act must be a distinct recognition not connected with or forming part of the original transaction: *Fox v. Mackreth*, *supra*; *Morse v. Royal*, *supra*; *Roche v. O'Brien*, *supra*; *Wood v. Downes*, 18 Ves. 128; *Roberts v. Tunstall*, 4 Hare, 267; but see *Clarke v. Swaile*, 2 Ed. 134.

Pressure.

It must not have been procured by pressure, or be the consequence of the embarrassed position of the *cestui que trust*: *Crowe v. Ballard*, 3 B. C. C. 117; *Dunbar v. Tredennick*, 2 B. & B. 317; *Wood v. Downes*, *supra*.

## II. By Lapse of Time.

Laches.

There is no rule deducible from the cases fixing the limit of time within which proceedings to upset sales to fiduciary purchasers must be taken, but the application should be made with promptness, so that the Court may have before it the circumstances of value, fairness, and other things which might be adduced by the trustee in support of the transaction. For instances, where lapse of time has been held a bar to relief, see *Randall v. Errington*, 10 Ves. 423; *Morse v. Royal*, 12 Ves. 355; *Champion v. Rigby*, 1 R. & M. 539; *Gregory v. Gregory*, G. Coop. 201, Jac. 631; *Selsey v. Rhoades*, 2 S. & S. 41, 1 Bli. N. R. 1.

Great delay  
fatal if  
dealing  
*bona fide*.

If the fact of the purchase by the trustees is distinctly known to the *cestui que trust*, and the whole transaction was perfectly open, the purchase will certainly not be set aside after 20 years: *Barwell v. Barwell*, 34 Bea. 371;



and see *Randall v. Errington*, 10 Ves. 423; but see *Attorney-General v. Dudley*, G. Coop. 146.

Proceedings to set aside the purchase after a lapse of more than 14 years failed in *Gregory v. Gregory*, *supra*; *Champion v. Rigby*, *supra*; *Roberts v. Tunstall*, 4 Ha. 257; *Baker v. Reul*, 18 Bea. 398. Extent of delay.

Infancy and ignorance of the fact of the purchase prevent time from running: *Campbell v. Walker*, 5 Ves. 678; *Randall v. Errington*, 10 Ves. 427; *Chalmer v. Bradley*, 1 J. & W. 51; *Charter v. Trevelyan*, 11 Cl. & F. 714. Disability and ignorance.

Inability to provide for the expense of a suit may prevent the time from running: *Oliver v. Court*, 8 Price, 167; *Roberts v. Tunstall*, 4 Hare, 269. Poverty.

With regard to acquiescence by a *feme covert*, see *Coverture. post*, p. 334.

A body of creditors may obtain greater indulgence: *Whichcote v. Lawrence*, 3 Ves. 752; *Exp. Smith*, 1 D. & C. 267. Creditors.

## CHAPTER XXV.

### OF THE RULE THAT TRUSTEES MAY NOT PROFIT BY THE TRUST : ALLOWANCES TO TRUSTEES.

Trustee  
may not  
profit by  
the trust.

THE office of trustee is an honorary one ; and no trustee or executor in trust under an express or constructive trust, and no person in a fiduciary position, is entitled to any benefit or to any remuneration for his care or trouble, unless an allowance for that purpose is provided by the instrument under which he acts ; and any profit so obtained is taken subject to a constructive trust for the persons at whose expense it is made : *Robinson v. Pett*, 3 P. W. 249 ; *Ellison v. Airey*, 1 Ves. Sen. 111 ; *New v. Jones*, 1 Macn. & G. 668 n. ; *Pollard v. Doyle*, 1 Dr. & Sm. 319 ; *Douglas v. Archbutt*, 2 D. & J. 148 ; *Aberdeen Town Council v. Aberdeen University*, 2 App. Ca. 544, 557.

Even if  
great ad-  
vantage to  
trust by  
his exer-  
tions.

The fact that great advantage has accrued to the estate by reason of the trustee's exertions will not entitle him to reward : *Robinson v. Pett*, *supra* ; *Barrett v. Hartley*, 2 Eq. 789.

Bonus dis-  
allowed.

Thus a sum of £400 claimed by the trustees for extraordinary pains, trouble, and expense of time in and about the affairs of the testator, particularly for having made up some very intricate accounts, and got in some desperate debts, was disallowed : *Robinson v. Pett*, *supra*.

A mortgagee, appointed, a trustee by certain cotton-spinners, to get in debts and to manage the property, was held not to be entitled to charge an annual bonus in his accounts, though it was shown that he had greatly benefited the estate : *Barrett v. Hartley*, *supra*.

A mortgagee with power of sale, being a member of a firm of auctioneers, or a broker, cannot charge commission upon a sale effected by his firm: *Matthison v. Clarke*, 3 Dr. 3; *Arnold v. Garner*, 2 Ph. 231; *Kirkman v. Booth*, 11 Beav. 273. Mortgagee being auctioneer.

A mortgagee in possession cannot charge for receiving rents, though he may employ a receiver or bailiff, if required, and debit the estate with the expense: *Godfrey v. Watson*, 3 Atk. 518; *Langstaffe v. Fenwick*, 10 Ves. 404; *Leith v. Irvine*, 1 M. & K. 286; *Davis v. Dendy*, 3 Madd. 170; *Sclater v. Cottam*, 3 Jur. N. S. 630. For receiving rents.

A mortgagee in possession cannot charge for commission on the amount of bills paid on consignments, or on costs of insurance of supplies for a colonial estate: *Leith v. Irvine*, 1 M. & K. 277. No commission on bills paid, consignments, &c.

If he acts as his own solicitor in a suit to defend his own title, he can have his costs out of pocket only, notwithstanding the rule that a mortgagee is entitled to the costs of defending his title: *Sclater v. Cottam*, 3 Jur. N. S. 630. Acting as solicitor for himself.

Though there is nothing to prevent a solicitor who is a trustee acting as solicitor to the trust, he can charge his *cestuis que trust* with costs out of pocket only, not with profit costs: *New v. Jones*, 1 Macn. & G. 668 n.; *Moore v. Frowd*, 3 M. & Cr. 45; *Christophers v. White*, 10 Beav. 523; *Clack v. Carlon*, 30 L. J. Ch. 640. Solicitors being trustees acting in trust matters.

And it makes no difference that he is employed by the other trustees: *Manson v. Baillie*, 2 MacQ. 80, in which *Cradock v. Piper*, 1 Macn. & G. 664, was in effect overruled; see *Broughton v. Broughton*, 5 D. M. & G. 160.

In one instance, where a solicitor-trustee employed his partner in the matter of the trust, on the terms of such partner being alone entitled to the profits, the Court allowed full professional charges: *Clack v. Carlon*, *supra*; but see *contra*, *Collins v. Carey*, 2 Bea. 128; *Christophers v. White*, 10 Bea. 523.

An executor acting as agent to the estate cannot charge as agent and obtain commission on business done for Agents.

the estate : *Sheriff v. Axe*, 4 Russ. 33 ; *Scattergood v. Harrison*, Mos. 128.

Bankers who are trustees. Bankers who are trustees can charge simple interest only on money advanced by them to the trust : *Crosskill v. Bower*, 32 Bea. 86.

Guardians. Guardians, being constructive trustees, are subject to the general rule : *Mathew v. Brise*, 14 Beav. 341 ; *Sleman v. Wilson*, 13 Eq. 36.

Committees. Committees of lunatics are allowed no remuneration except under special circumstances : *Re Walker*, 2 Ph. 630 ; *Re Westbrooke*, 2 Ph. 631 ; *Exp. Fermor*, Jac. 404.

Inspectors under creditors' deeds. Inspectors under creditors' deeds cannot charge profits against the estate for goods supplied for its use : *Chaplin v. Young*, 33 Beav. 414.

### Allowances.

Cases where sale relaxed. The cases in which the Court has relaxed the general rule are as follows :—

Trustee acting as solicitor in numerous suits. A trustee acting as solicitor in a number of suits affecting the trust estate would, it seems, under special circumstances, be allowed a reference to Chambers to fix a remuneration, but not by way of profit costs : *Bainbrigg v. Blair*, 8 Beav. 588 ; and see *Marshall v. Holloway*, 2 Swans. 453 ; *Re Newton*, 3 De G. & Sm. 584.

Firm acting in trust matters. Where he agrees not to participate in the profits, his firm may do the trust business : *Clack v. Carlon*, 30 L. J. Ch. 640.

Costs of another client lending to the trust. And he may charge with costs another client who lends money to the trust : *Whitney v. Smith*, 4 Ch. 513.

Or as manager of testator's business. Where he had managed the testator's business and leaseholds for two years, he was allowed £120 by the Court without a reference being directed : *Forster v. Ridley*, 4 D. J. & S. 452.

Remuneration to surviving partner. As a surviving partner continuing the business with a deceased partner's capital must account to his estate for his share of the profits, the Court makes some pecuniary allowance for the time and trouble of the surviving partner : *Brown v. De Tastet*, Jac. 284, 299.

So the mate of a ship, who had traded advantageously with the deceased captain's money, was bound to account for the profits to his estate, but was allowed a fair sum for his care and trouble : *Brown v. Litton*, 1 P. W. 139.

To mate of ship where captain dies.

Under special colonial legislation West Indian trustees, agents, &c., are allowed to charge a commission not exceeding 6 per cent. on consignment, management, &c.

West Indian trustees : special statutory commission. Not of absentees.

But such persons must be actually resident in the island and willing to act : *Denton v. Davy*, 1 Moore, P. C. C. 15 ; *Forrest v. Elwes*, 2 Mer. 68.

Money actually paid by them during absence may be recovered if the payments are reasonable : *Forrest v. Elwes*, *supra* ; *Chambers v. Goldwin*, 5 Ves. 834 ; 9 Ves. 254.

And sales on which commission is charged must have been actually made and completed on the island : *Henckell v. Daly*, 1 Moore, P. C. C. 51.

On what sales.

And the consignee has a lien on the estate for the balance due to him, unless precluded from enforcing it by express contract to the contrary : *Chambers v. Davidson*, L. R. 1 P. C. 296.

Consignee's lien.

The Administrator-General of Estates in Bengal is entitled to a commission of 3 per cent. on moneys distributed or invested : Act No. VII., 1849.

Commission of Administrator-General of Bengal.

[In Madras and Bombay the rate is the same : see *Matthews v. Bagshaw*, 14 Beav. 126 n.]

In Madras and Bombay.

Provision for remuneration of an administrator of a convict's property appointed under section 9 of 33 & 34 Vict. c. 23, is made by section 11 of that Act.

Remuneration of administrator of convict's property.

As to a trustee in bankruptcy, who is a solicitor, contracting for remuneration, see s. 29 of the Bankruptcy Act, 1869.

Contract for remuneration to trustee in bankruptcy.

A solicitor or other professional person, who is a trustee, may make his usual professional charges, where due provision for that purpose is made by the settlement : *Ellison v. Airey*, 1 Ves. Sen. 114 ; *Moore v. Frowd*, 3 M. & Cr. 45 ; *Willis v. Kibble*, 1 Bea. 559 ; *Douglas v. Archbutt*, 2 D. & J. 148.

Provision for solicitor-trustee, or other person to charge.

- Not affected by such agreement. Such provision does not cease to operate by the institution of an administration suit: *Baker v. Martin*, 8 Sim. 25; *Jackson v. Hamilton*, 3 J. & L. 702.
- Parol agreement. It seems that such charges will be allowed on a verbal agreement: *Fraser v. Palmer*, 4 Y. & C. Ex. 515.
- Extra costs and commission. Even where a trustee was under the will to charge a commission, further allowance was sanctioned for management and trouble in paying rates and taxes, stewards, bailiffs, &c.: *Webb v. Earl of Shaftesbury*, 7 Ves. 480.
- Reference to Chambers to fix remuneration. The amount of the remuneration provided for, but not fixed, will be referred to Chambers: *Ellison v. Airey*, 1 Ves. Sen. 114; *Jackson v. Hamilton*, 3 J. & L. 702; *Willis v. Kibble*, 1 Beav. 559.
- Auditor. If the testator appoints an auditor with a salary, the trustees must allow him to act and pay him: *Williams v. Corbet*, 8 Sim. 349; *Hibbert v. Hibbert*, 3 Mer. 681.
- "Professional services": what. "Liberty to charge for professional services" means only services strictly professional, and not such things as attendances to pay premiums, or to make transfers, or on proctors, auctioneers, legatees and creditors: *Harbin v. Darby*, 28 Beav. 325.
- Where annuity for trouble. Where an annuity is given to a trustee for his trouble so long as he continues to act as trustee, it ceases when the property is paid over to a person absolutely entitled: *Hull v. Christian*, 17 Eq. 546; and this will be the case even though there are no express words in the will to limit it to that period: *Henrion v. Bonham*, Drur. 476.
- Legacy annexed to office. A trustee to whom a legacy is so given as to be clearly annexed to the office, will not take it if he has never acted: *Piggott v. Green*, 6 Sim. 72; *Slaney v. Watney*, 2 Eq. 418.
- Legacy not necessarily a bar. A legacy is not in a proper case a bar to remuneration; and where a trustee refuses to act without payment, it will be referred to Chambers to enquire if it is for the advantage of the beneficiaries that he should continue to act, and to fix an allowance for both past and future services: *Marshall v. Holloway*, 2 Sw. 453.
- Refusal to act without reward.
- Petition for remuneration.

not to undertake it without compensation, a special case for it must be made by petition before the trust is accepted: *Brocksopp v. Barnes*, 5 Madd. 90; *Bainbrigge v. Blair*, 8 Bea. 597.

neration  
in a proper  
case.

There is nothing actually illegal in a contract between a trustee and his *cestui que trust*, that the former should receive compensation for his trouble: *Barrett v. Hartley*, 2 Eq. 789; *Re Wyche*, 11 Bea. 209; *Stanes v. Parker*, 9 Bea. 385; *Todd v. Wilson*, 9 Bea. 486.

Contract  
for reward.

But the *cestui que trust* must be a reasonably free agent, and in a situation to enable him fairly to make a bargain for himself, as any circumstances of pressure will inevitably vitiate the transaction: *Ayliffe v. Murray*, 2 Atk. 58; *Gould v. Fleetwood*, cited 3 P. W. 251 n.; *Barrett v. Hartley*, *supra*; *Eyre v. Hughes*, 2 Ch. D. 161.

Pressure  
avoids con-  
tract.

Separate independent advice, or at least a clear understanding on the part of the *cestui que trust* that the trustees would otherwise be entitled to costs out of pocket only, is a necessary requirement to render such a contract valid: *Re Wyche*, *supra*; *Re Sherwood*, 3 Bea. 338; *Todd v. Wilson*, 9 Bea. 486.

Separate  
advice.

Such a contract between a solicitor-trustee and his co-trustee who is also executrix, is of no effect: *Broughton v. Broughton*, 5 D. M. & G. 160.

Contract  
between  
solicitor-  
trustee,  
and co-  
trustee  
executrix.

As between mortgagor and mortgagee an agreement that the latter shall have an allowance as receiver will not be enforced: *Chambers v. Goldwin*, 9 Ves. 271.

Mortgagor  
and mort-  
gagee.

A solicitor who is a mortgagee cannot stipulate for a commission on rents received as a condition of a further advance: *Eyre v. Hughes*, 2 Ch. D. 148.

Making  
allowance  
condition  
of further  
advance.

Trustees are allowed all costs out of pocket, and such sums as are held to be "just allowances."

Costs out  
of pocket.

"Just allowances" include:—

Taking opinions of counsel and procuring directions: *Fearn v. Young*, 10 Ves. 184.

Just al-  
lowances:  
opinions of  
counsel.

Charges of a sale: *Crump v. Baker*, 18 Ves. 284.

Costs of  
sale.

Accountant's charges: *New v. Jones*, 1 Macn. & G. 668 n.; *Henderson v. McIver*, 3 Madd. 275.

Account-  
ant's  
charges.

Collecting  
rents by  
agents.

A rent collector's or mortgagee's charges where there were several houses let to weekly tenants: *Wilkinson v. Wilkinson*, 2 S. & S. 237; *Davis v. Dendy*, 3 Madd. 170.

*Secus*:  
committees

A committee has been allowed percentage on rents collected as a just allowance: *Re Westbrooke*, 2 Ph. 631.

and solicitors.

So have solicitors, where the rents would be endangered by waiting for the appointment of a receiver: *Stewart v. Hoare*, 2 Bro. C. C. 663.

When  
trustees  
appointed  
receivers  
with salary.

But trustees may be appointed receivers with a salary where they have special knowledge and it is for the benefit of the trust estate: *Marshall v. Holloway*, 2 Swans. 453; *Newport v. Bury*, 23 Bea. 30.

But special circumstances must be shown: *Anon*, 3 Ves. 515; *Sykes v. Hastings*, 11 Ves. 363; *Sutton v. Jones*, 15 Ves. 584.

Recovery  
of extra  
costs.

The extra costs or allowances of a trustee may be recovered in a second suit as to the same estate: *Amand v. Bradbourne*, 2 Ch. Ca. 138; and see *Walters v. Woodbridge*, 7 Ch. D. 504.



## CHAPTER XXVI.

### OF THE RETIREMENT AND REMOVAL OF TRUSTEES AND APPOINTMENT OF NEW TRUSTEES.

WHENEVER any trustee, either original or substituted, and whether appointed by the Court or otherwise, shall die, or desire to be discharged from, or refuse, or become unfit, or incapable to act, it shall be lawful for the person or persons nominated for that purpose by the deed, will, or other instrument (if any) creating the trust, or if there be no such person, or no such person able and willing to act, then for the surviving or continuing trustees or trustee for the time being, or the acting executors or executor, or administrators or administrator of the last surviving and continuing trustee, or for the last retiring trustee, by writing to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, or desiring to be discharged, or refusing, or becoming unfit, or incapable to act as aforesaid ; with power to vest the trust estate in such new trustee or trustees ; and every new trustee so appointed as well before as after the conveyance to him, and also every trustee appointed by the Court of Chancery either before or after the passing of the Act, may exercise all powers as if he had been an original trustee : 24 & 25 Vict. c. 145, 527.

This Act does not oust the jurisdiction of the Court to increase the number of trustees : *D'Adhémar v. Bertrand*, 35 Bea. 19 ; *Re Breary*, W. N. 1873, 48.

In a case where, of two trustees, the surviving or continuing trustees or trustee were to appoint, and both died without appointing, it was considered too doubtful whether

Lord Cranworth's Act: supplying power to appoint new trustees.

Act does not prevent increase of numbers. Where donee of power dies without appointing.

the Act applied, and the Court made the appointment: *Re Jackson*, 16 W. R. 572; 18 L. T. N. S. 80.

Appoint-  
ment by  
survivor.

Where one of two trustees of a separation deed died, it was held that the power vested in the survivor, and a petition by the husband claiming the right to select a new trustee to be appointed by the Court under the Act was dismissed with costs: *Re Soulby*, 21 W. R. 256.

Rectifica-  
tion of  
power.

Where the power in a deed was clearly not in accordance with the prior executory settlement, the appointment under it was confirmed and the power rectified by the Court: *Tebbitt v. Tebbitt*, 1 De G. & Sm. 506; see the decree, p. 510.

Jurisdic-  
tion not-  
withstand-  
ing power;

The Court has power to appoint new trustees though there be a power in the instrument: *Re Fauntleroy*, 10 Sim. 252.

in an  
action.

And it has inherent jurisdiction in a cause to appoint trustees of a will in a case where no trustees were originally appointed by the testator: *Dodkin v. Brunt*, 6 Eq. 580; *Re Davis*, 12 Eq. 214.

Where  
trustees  
refuse to  
act.

Or where the trustees originally appointed refuse to act: *Moggeridge v. Grey*, Nels. 42; *Anon.* 4 I. Eq. R. 700; but see *Re Gart*, 10 L. T. N. S. 331.

Or cease to  
exist.

As to the course to be adopted where a body of trustees cease to have existence as such, or where there is no trustee in existence: *King of Hanover v. Bank of England*, 8 Eq. 350; *Gunson v. Simpson*, Eq. 332; *Re Smirthwaite*, 11 Eq. 251.

Where  
there are  
*de facto*  
trustees  
with power  
to appoint.

The Court has no authority to appoint new trustees under Lord Cranworth's Act where there are trustees *de facto* acting, or willing and able to make an appointment as such: *Exp. Hadley*, 5 De G. & Sm. 67; *Re Hodson*, 9 Hare, 118.

Intended  
corrupt  
exercise of  
power.

Even if the trustees show an intention of exercising it corruptly: *Re Hodson, supra*.

Court's  
control  
over ex-  
ercise.

Where the trustees were entitled to a commission, Lord Eldon said that the Court would see that the discretion to appoint was properly exercised: *Webb v. Shaftesbury*, 7 Ves. 487.

And if the appointor has actually taken money for the appointment, the Court will set it aside : *Sugden v. Crossland*, 3 Sm. & G. 192 ; *Raikes v. Raikes*, 32 Bea. 403.

Taking money for appointment.

In ordinary cases trustees who are parties to an action are not allowed to change the trustees without the authority of the Court : *Webb v. Shaftesbury*, 7 Ves. 480 ; *Attorney-General v. Clack*, 1 Bea. 467 ; *Peatfield v. Benn*, 17 Bea. 522 ; and see *Graham v. Graham*, 16 Bea. 550 ; *Cafe v. Bent*, 3 Hare, 245 ; *Buxton v. Buxton*, 1 M. & Cr. 80.

Changing trustees *pendente lite*.

The Court will direct an appointment without reference to Chambers upon proper evidence of fitness : *Oglander v. Oglander*, 2 De G. & Sm. 381. For the form of order for appointment of new trustees in an action see Seton, 499.

Practice on appointment in an action.

New trustees of a fund in Court should be made parties to an action for the administration of the trusts : *Nelson v. Seaman*, 1 D. F. & J. 368.

Parties.

The death of the trustee in the testator's lifetime does not prevent his place being filled up by the donee of the power : *Re Hadley*, 5 De G. & Sm. 67 ; see *contra*, *Winter v. Rudge*, 15 Sim. 596 ; but this is now expressly enacted by s. 28 of 23 & 24 Vict. c. 145.

Death of trustee in lifetime of testator.

A trustee who has accepted a trust is not allowed voluntarily, from mere caprice or other trivial cause, to throw it up at the expense of his *cestui que trust* : *Courtenay v. Courtenay*, 3 J. & L. 529 ; *Howard v. Rhodes*, 1 Keen, 581 ; *Forshaw v. Higginson*, 20 Bea. 485.

Trustees must not retire capriciously.

But if he finds the trust estate involved in complicated questions not contemplated when he undertook the trust, he has a right to come to the Court to be relieved from it : *Greenwood v. Wakeford*, 1 Bea. 576 ; *Coventry v. Coventry*, 1 Keen, 758 ; *Gardiner v. Downes*, 22 Bea. 397.

May retire if unexpected questions arise.

And the privilege of payment in under the Trustee Relief Act does not take away that right : *Barker v. Peile*, 2 Dr. & Sm. 340 ; but see *Wells v. Malbon*, 31 Bea. 48 ; *Thomas v. Walker*, 18 Bea. 521.

Though he might pay into Court.

But such questions must arise out of the administration of the trusts, and not relate to himself individually,

in which latter case he must pay the costs occasioned by his retirement : *Forshaw v. Higginson*, 20 Bea. 485.

But if the trusts are such as that it is doubtful whether they ought to have been declared in the mode adopted by the deed appointing the trustees, though they may know of the doubt before accepting the trust, still if they afterwards receive information making it doubtful whether they ought to execute them, they have a right to come to the Court for its direction whether the trusts ought to be executed : *Neale v. Davies*, 5 D. M. & G. 258.

Refusal of  
benefici-  
aries to re-  
tirement.

If the *cestui que trust* refuse to allow him to retire, or to take any steps to replace him, the trustee would be entitled to go to the Court to be relieved : *Forshaw v. Higginson*, 20 Bea. 485 ; see — *v. Osborne*, 6 Ves. 455 ; *Gardiner v. Downes*, 22 Bea. 395.

*Cestui que*  
*trust*  
taking  
benefit of  
the action.

If the *cestui que trust* take the benefit of the action by asking for an account against him, the action becomes one for ordinary administration, with the usual result as to costs : *Forshaw v. Higginson*, 20 Bea. 485.

Where  
doubtful  
that trust  
at an end.

Where a jointure term was vested in trustees, and the wife afterwards released her jointure, upon the sale of the estate charged, without the concurrence of the trustees, it was held that they were entitled to full proof that their duties were at an end, and to their costs of a suit to compel them to assign the term to the purchaser of the estate : *Holford v. Phipps*, 3 Bea. 434.

Where  
trust at an  
end.

But in a case where the equitable estate is assigned to other trustees for sale, the original trustees are not entitled to demand that their *cestuis que trust* should be parties to the assignment of the legal estate : *Angier v. Stannard*, 3 M. & K. 566.

Executor  
need not  
become a  
trustee.

An executor is not bound to undertake any continuing trusts, and will have his costs on proceedings to remove him : *Legg v. Muckrell*, 2 D. F. & J. 551 ; and see *Aldridge v. Westbrook*, 4 Bea. 212.

Duty of  
retiring  
trustee.

When a trustee becomes desirous of retiring, he is bound to transfer the property to the continuing trustee, and a new trustee to be appointed in his place ; and nothing

can relieve him from that obligation but the consent of all parties interested in the trust, which is possible only if all are free from disability: *Wilkinson v. Parry*, 4 Russ. 272.

So if he assigns to the continuing trustee alone, he remains liable for a subsequent loss of the fund: *Ibid.*; and see *Attorney-General v. Pearson*, 3 Mer. 412.

Must not assign to sole trustee.

And it is not enough to transfer the fund without executing the deed of appointment: *Pearce v. Pearce*, 22 Bea. 248.

And must execute the deed.

An appointment with notice of an intended breach of trust to be committed by the new trustees, leaves the appointing trustee liable for it: *Le Hunt v. Webster*, 9 W. R. 918; *Palairet v. Carew*, 32 Bea. 567; *Clark v. Hoskins*, W. N. 1867, 216.

Notice of intended breach of trust by new trustee.

It is improper for a trustee to retire on the ground of want of confidence in his co-trustee, who might immediately exercise the power to appoint a new trustee of his own choice: *Forshaw v. Higginson*, 20 Bea. 487.

Where trustee distrusts co-trustee.

Since the Judicature Act, 1873 (s. 25, sub. s. 10), it would seem that a bond of indemnity given to the retiring trustee would not be available or sustainable at law, and that the case of *Warwick v. Richardson*, 10 M. & W. 284, would not now be followed.

Indemnity to retiring trustee.

A trustee, who is entitled to be discharged from his trust, is not bound to show that there is some other person ready to accept the trust. If no person will accept the trust, the Court may have to keep the trustee before it, and not discharge him; but it will take care that the trustee shall not suffer thereby: *Courtenay v. Courtenay*, 3 J. & L. 519; *Ardill v. Savage*, 1 Ir. Eq. R. 79; but see *Hamilton v. Fry*, 2 Moll. 458. In such a case it seems that the Court will appoint the remaining trustee to be sole trustee, in order to avoid the alternative of an action for administration: *Re Stokes*, 13 Eq. 333.

Where no new trustee can be found.

When part of the trust estate is alleged to have been lost by the former trustees, the whole estate is vested by the order in the new trustees, with inquiries as to the

Where old trustees have lost part of estate.

loss : *Bennett v. Burgis*, 28 Feb., 1846 ; 5 Hare, 296 ;  
*Hansell v. Hansell*, V.-C. M., 12 June, 1875.

Effect of  
 appointment by  
 Court as to  
 indemnity.  
 Where  
 case not  
 provided  
 for by  
 power.

Trustees are not indemnified by an appointment by the Court further than they would have been if appointed under a power : Trustee Act, 1850, s. 36.

It is necessary to apply to the Court where a trustee, wishing to retire, has acted, and has power to appoint, only in the case of "dying, declining, or becoming incapable to act" : *Re Woodgate*, 5 W. R. 448 ; *Re Armstrong*, *ibid.* ; compare *Travis v. Illingworth*, 2 Dr. & Sm. 344.

Payment  
 into Court  
 is refusal  
 to act.

Payment into Court under the Trustee Relief Act, is a case of "refusing or declining to act" : *Re Williams*, 4 K. & J. 87.

Effect of  
 disclaimer.

A proper disclaimer is construed as a desire to retire ; and whether the disclaiming trustee had acted or not, the donee of the power, who was the settlor, was held entitled to appoint new trustees : *Noble v. Meymott*, 14 Bea. 471.

Where three trustees were appointed and one disclaimed, and one died, the remaining one was held entitled to appoint new trustees, though the power was given to the "surviving trustee" : *Cafe v. Bent*, 5 Hare, 24.

A disclaiming trustee may reserve his power to appoint new trustees in his own place and in the place of one who had died in the settlor's life time : *Re Hadley*, 5 De G. & Sm. 67.

Renuncia-  
 tion by  
 executor  
 having the  
 power.

If the power is given to executors and one renounces, the others may exercise it : *Granville v. McNeile*, 7 Ha. 156.

Effect of  
 declining to  
 act where  
 power  
 given to  
 "surviving  
 or continu-  
 ing."

A power for the survivors, or survivor, of two trustees "so acting in trusts, &c.," is exercisable only by the trustees continuing to act, and not by both who decline to act : *Sharp v. Sharp*, 2 B. & Ald. 405.

Two retiring trustees cannot appoint two new trustees under a power given to surviving or continuing trustees : *Stones v. Rowton*, 17 Bea. 308 ; and see *Nicholson v.*

*Wright*, 5 W. R. 431; *Travis v. Illingworth*, 2 Dr. & Sm. 344.

A power to the surviving, or continuing, or other trustee or trustees, authorises an appointment by the survivor of four trustees who was desirous of retiring, he being thus "another" trustee: *Camoy's v. Best*, 19 Bea. 414.

Where it is held that a trustee, by reason of bankruptcy, is unfit to act, the power of the tenant for life to appoint may still be unaffected, though there may be no "surviving or continuing trustee" with whose concurrence he had power to appoint: *Re Roche*, 1 C. & L. 308; and see *Morris v. Preston*, 7 Ves. 547.

Effect of being "incapable" where power to "surviving or continuing."

As to the appointment of new trustees where several classes of trustees are appointed in respect of several parts of the property, see *Sharp v. Sharp*, 2 B. & Ald. 404; see *Re Dennis*, 12 W. R. 575.

Sets of trustees.

The conviction of a trustee gives the Court power to appoint under the Trustee Extension Act, 1852 (s. 8).

Felony.

The bankruptcy of a trustee renders him "unfit" to act: *Re Roche*, 2 Dr. & War. 287; *Harris v. Harris*, 29 Bea. 107; *Re Renshaw*, 4 Ch. 783.

"Unfit to act."

Though he is discharged and the trust estate is in the hands of a receiver: *Bainbrigge v. Blair*, 1 Bea. 495.

Discharged bankrupt.

"It is the duty of the Court to remove a bankrupt trustee who has trust money to receive or deal with, so that he can misappropriate it:" *Re Barker*, 1 Ch. D. 43; *Re Bridgman*, 1 Dr. & Sm. 164; *Harris v. Harris*, 29 Bea. 107; Bankruptcy Act, 1869 (32 & 33 Vict. c. 71, s. 117).

Removal by Court on bankruptcy.

If a trustee becomes bankrupt, the Chancery Division will remove him under s. 117 of the Bankruptcy Act, 1869: see the cases under the similar sections of the Act of 1849 (s. 130): *Exp. Buffery*, 2 D. & C. 577; *Exp. Painter*, 2 D. & C. 584; *Re Remington*, 3 D. & C. 24; *Exp. Saunders*, 2 G. & J. 132; *Exp. Inkersole*, 2 G. & J. 230.

Under Bankruptcy Act, 1869, s. 117.

The "Court" mentioned in s. 117 of the Bankruptcy

Act, 1869, is the late Court of Chancery: *Coombes v. Brookes*, 12 Eq. 61; see *Re Renshaw*, 4 Ch. 783.

“Incapable to act.”

The words “incapable to act” refer to personal incapacity; and therefore, however unfit to act, an absconding bankrupt does not come within the meaning of the term, so as to bring the case within the power: *Re Watts*, 9 Ha. 106; and see *Turner v. Maule*, 15 Jur. 761; *Re Renshaw*, 4 Ch. 783.

Absence abroad.

Upon the same principle, residence abroad is not necessarily a reason for appointing new trustees, though the Court might, under the Trustee Act, deem it expedient to make such an appointment: *Re Bignold*, 7 Ch. 223; and see *Withington v. Withington*, 16 Sim. 104; *Re Harrison*, 22 L. J. Ch. 69; *Re Stewart*, 8 W. R. 297. *Mennard v. Welford*, 1 Sm. & G. 426, *contra*, is disapproved.

Permanent absence abroad.

*Secus*, as to permanent residence abroad: *Ledwich v. Ledwich*, 6 Ir. Eq. 561.

And apart from the Act, the Court would, in a suit, consider the *prima facie* objection to a trustee residing abroad, and control the discretion to refuse to supply his place: *O'Reilly v. Alderson*, 8 Ha. 104.

Temporary absence abroad.

A mere temporary absence is not a ground for substitution: *Re Moravian Society*, 26 Bea. 101.

Mortgage trusts not within Trustee Act.

The Trustee Acts do not apply to the duties incident to an estate conveyed by way of mortgage: Trustee Act, 1850, s. 2; and see *Re Osborn*, 12 Eq. 392.

But the form of a mortgage deed may, by its terms, embrace trusts which would bring the case within the Acts: *Re Underwood*, 3 K. & J. 745.

But implied and constructive trusts are.

And the Act (by the above section) includes implied and constructive trusts, and cases in which the trustee has also a beneficial interest: see *Re Probert*, 1 W. R. 237; *Re Angelo*, 5 De G. & Sm. 278; *Re Davis*, 12 Eq. 214.

Unpaid vendors.

Thus the infant heir of a vendor who has died without conveying is within the Act after a decree declaring him to be a trustee for the purchaser: *Re Carpenter*, Kay, 418;



*Re Wilkinson*, 12 W. R. 522 ; *Re Weeding*, 4 Jur. N. S. 707.

Unsoundness of mind is within the case of being "unable to act" : *Re East*, 8 Ch. 735. Lunacy.

In selecting the proper persons to be appointed as new trustees, the rules of the Court, which should be followed also in appointments privately made, are as follows :— Principle on which new trustees selected.

Regard should be had to the wishes of the persons by whom the trusts have been created, if expressed in the instrument creating the trusts, or clearly to be collected therefrom : *Re Tempest*, 1 Ch. 485.

No person should be appointed with a view to the interest of some of the parties interested under the trusts, in opposition either to the wishes of the settlor or to the interests of others of the *cestuis que trust* : *Ibid*.

Regard should be had to the question whether the appointment will promote or impede the execution of the trust : *Ibid*.

And where the Court appoints new trustees in a suit, the wishes of the donee of the power will, in a proper case, be complied with : *Middleton v. Reay*, 7 Hare, 106. Wishes of parties interested.

A relation of the *cestui que trust* should not be appointed, unless no one else can be found to undertake the office : *Wilding v. Bolder*, 21 Bea. 222 ; *Re Hattatt*, W. N., 1870, 14 ; *Re Davis*, 12 Eq. 214. Appointment of relations.

And, *à fortiori*, a relation with whom the settlor was on bad terms : *Re Tempest*, *supra*.

If the power to appoint contains nothing to the contrary, the tenant for life may be appointed : *Forster v. Abraham*, 17 Eq. 351 ; and see *Exp. Clutton*, 17 Jur. 988 ; *D'Adhemar v. Bertrand*, 35 Bea. 19. Tenant life.

Or a *cestui que trust* : *Re Dixon*, 21 W. R. 220 ; *Re Clissold*, 10 L. T. N. S. 642 ; *Re Campbell*, 31 Bea. 176 ; *Re Berkley*, 9 Ch. 720. *Cestui que trust*.

Or the husband of a *cestui que trust* : *Re Hattatt*, 18 W. R. 416. Husband.

Or the solicitor to the trust : *Re Brentnall*, W. N. 1872, 77. Solicitor to trust.

- Foreigner.** It is not necessarily objectionable to appoint a foreigner, though a marriage settlement is usually assumed to be English if made in England ; and though it comprise personality only, if the husband have not given up an original foreign domicil of origin, foreign trustees may be appointed : *Meinertzhagen v. Davis*, 1 Coll. 335, 345 ; *Re Curtis*, 1. R. 5 Eq. 429 ; *Re Smith*, 20 W. R. 695 ; but see *Re Guibert*, 16 Jur. 852 ; *Re Long*, 17 W. R. 218.
- Infant.** An infant may be removed, but he retains the right to assume the trust at majority : *Re Porter*, 25 L. J. Ch. 482 ; *Re Shelmerdine*, 33 *ibid.* 474.
- Females.** A married, or even a single woman, is obviously not a desirable person for the office of trustee : *Brook v. Brook*, 1 Bea. 531 ; *Avery v. Griffin*, 6 Eq. 606 ; but see *Re Campbell*, 31 Bea. 176.
- Increase of number.** Unless the power expressly limits the original number, the number may be increased : *Meinertzhagen v. Davis*, 1 Coll. 335 ; *Sands v. Nugee*, 8 Sim. 130 ; and see *Hillman v. Westwood*, 24 L. J. Ch. 57 ; *Birch v. Cropper*, 2 De G. & Sm. 255 ; *Plenty v. West*, 16 Bea. 356 ; *Re Tunstall*, 4 De G. & Sm. 421 ; *Re Boycott*, 5 W. R. 15 ; but see *Exp. Davis*, 2 Y. & C. C. C. 468 ; *Re Breary*, W. N. 1873, 48 ; *Re Hill*, W. N. 1874, 228 ; *Re Drewe*, W. N. 1876, 168.
- Intention against increase.** Where it appeared by evidence that the intention of the settlors was that there should not be less than two trustees, it was held to be a breach of trust to appoint a single one ; *Hulme v. Hulme*, 2 M. & K. 682.
- Other reasons against increase.** The Court is guided by the selection of the *cestuis que trust*, the state of the property, and the time at which the appointment is brought to the notice of the Court, and it will not declare the appointment of a diminished number of trustees a breach of trust after the trust has for a long time been administered by them : *Re Poole Bathurst*, 2 Sm. & G. 173 ; and see *Emmet v. Clark*, 3 Gif. 32.
- Diminution in number.** In a proper case the Court will appoint less than the original number : *Lonsdale v. Beckett*, 4 De G. & Sm. 73 ;

*Re Marriott*, W. N. 1868, 215 ; but see *Corrie v. Byrom*, Hill on Trustees, 610 ; and *Walsh v. Gladstone*, 14 Sim. 2.

The Court never allows a sole trustee to continue alone, or appoints a person to be a sole trustee : *Re Tunstall*, 4 De G. & Sm. 421 ; *Re Dickinson*, 1 Jur. N. S. 724 ; *Re Roberts*, 7 Jur. N. S. 818 ; *D'Adhemar v. Bertrand*, 35 Bea. 19 ; but see *Devey v. Peace*, Tambl. 77 ; *Re Stokes*, 13 Eq. 333.

And a remainderman may ask for an appointment of additional trustees where only a sole trustee remains : *Finlay v. Howard*, 2 Dr. & War. 490.

Funds will not be paid out of Court to a sole trustee, unless all parties are before the Court : *Re Roberts*, 7 Jur. N. S. 818.

And if the original number be reduced to one, he should not retire unless the original number be filled up : *Barnes v. Addy*, 9 Ch. 244.

In charitable trusts, a power to appoint when the number is reduced to a given number may be exercised, though the number may have fallen below that specified : *Attorney-General v. Floyer*, 2 Vern. 748 ; and see *Doe v. Roe*, 1 Anst. 86.

Since Lord St. Leonard's Act (22 & 23 Vict. c. 35, s. 21), "any person shall have power to assign personal property by law assignable (as to which see Judicature Act, 1873, s. 25, sub-sec. (6) ), including chattels real, directly to himself and another person or persons, or corporation, by the like means as he might assign the same to another." In consequence of this enactment, only one deed is necessary for the appointment of new trustees and the vesting of all kinds of property in them ; for the Act allows of assignments by the continuing trustee to himself and another. Equitable interests require no assignment, if the intention to assign sufficiently appear ; and real estate is now considered to be properly vested by a simple conveyance : Lewin, pp. 357—359.

The executors of the last surviving trustee must not Duty of

executors  
of last  
surviving  
trustee.

Where  
tenant for  
life, donee  
of power,  
sells or  
mortgages.

Position of  
trustee  
before con-  
veyance to  
him.

refuse to transfer the fund to new trustees duly appointed by the tenant for life, or pay the fund into Court: *Re Wise*, 1 R. 3 Eq. 599.

If the tenant for life have the power to appoint, and he sell or mortgage, he may still appoint with the concurrence of the purchaser or mortgagee: *Lewin*, p. 550; and see *Alexander v. Mills*, 6 Ch. 124.

If after a sale, the nominated trustee to whom the estate has not been transferred obtains the purchase-money, he becomes a trustee for all purposes: *Clough v. Bond*, 3 M. & Cr. 497; *Welstead v. Colville*, 28 Bea. 537.

After an appointment has been duly made, even where the instrument does not provide for the immediate acting of the new trustees, they may exercise a power of sale before the conveyance to them of the trust estate; *Welstead v. Colville*, 28 Bea. 537; but see *Foley v. Wontner*, 2 J. & W. 248.

In such a case the continuing trustees can maintain an action for specific performance, and give a discharge for the purchase-money: *Warburton v. Sandys*, 14 Sim. 622.

And powers may be exercised by the appointing trustees, though the appointment be not properly made; *Miller v. Priddon*, 1 D. M. & G. 335; but see *Lancashire v. Lancashire*, 2 Ph. 657.

His posi-  
tion since  
Lord Cran-  
worth's  
Act.

It will be observed that the concluding words of the 27th sect. of Lord Cranworth's Act, "Every trustee appointed by the Court of Chancery, either before or after the passing of this Act, shall have the same powers, authorities, and discretions, and shall in all respects act as if he had been originally nominated as trustee by the deed, will, or other instrument creating the trust," are retrospective, and get rid of the former doctrine that new trustees appointed by the Court could not exercise certain of the powers entrusted to original trustees: *Hall v. Dewes*, Jac. 189; see *Cole v. Wade*, 16 Ves. 27; *Cooper v. Macdonald*, 35 Bea. 504.

Trustees appointed by the Court in an action are permitted to exercise discretionary powers: *Bartley v. Bartley*, 3 Dr. 385. Powers of trustees appointed in a cause.

But not to appoint new trustees: *Holder v. Durbin*, 11 Bea. 594; but see in the case of charities, *Attorney-General v. Mayor of Coventry*, Seton, 500.

The costs of appointments, including those of retiring trustees, are chargeable on the trust estate: *Greenwood v. Wakeford*, 1 Bea. 581; *Forshaw v. Higginson*, 20 Bea. 486; *Gardiner v. Downes*, 22 Bea. 395; *Carter v. Sebright*, 26 Bea. 376. Costs of appointment of new trustees.

Such costs do not include those of attested copies of the trust deed, which the new trustee is not entitled to demand: *Warter v. Anderson*, 11 Hare, 301.

Under 33 & 34 Vict., c. 97, a deed appointing new trustees must bear a 10s. stamp; but if there be more than one deed, only one of them need be stamped (24 & 25 Vict., c. 91, s. 30), and see *Foley v. Commissioners of Inland Revenue*, L. R. 3 Ex. 263. See further as to the practice under the Trustee Acts, Morgan and Chute, p. 76 *et seq.*; Carson's Shelford's Real Prop. Stat., pp. 647—685, Seton, pp. 503—594. Stamps.

### *Removal of Trustees.*

If a trustee become interested in an estate, by purchasing, or taking a lease of it, or otherwise, he must have ceased to be a trustee, in order to take the benefit (*ante*, p. 185), and if he have not so ceased, he may be removed: *Exp. Reynolds*, 5 Ves. 707; *Re Phelps*, 9 Mod. 357; *Passingham v. Sherborn*, 9 Bea. 424. Removal of trustee on purchasing trust estate.

The 32nd section of the Trustee Act does not give the Court jurisdiction on petition under the Act to remove a trustee who is desirous of continuing in the trust: *Re Blanchard*, 3 D. F. & J. 131; *Re Garty*, 10 L. T. N. S. 331; *Re Dennis*, 12 W. R. 575. Court cannot remove under Trustee Act.

Nor will the Court consider the question of the validity of the trust deed; but, in appointing new trustees under Nor enquire as to

validity of trust deed. it, the rights of parties will not be otherwise affected : *Re Matthews*, 26 Bea. 463 ; and see *Attorney-General v. Ward*, 6 Hare, 477.

Action to define rights. But, by section 53 of the Act, the Court may postpone making any order until the rights of the petitioner have been ascertained by an action : see *Re Carpenter*, Kay, 418 ; *Re Collinson*, 3 D. M. & G. 409 ; *Re Weeding*, 4 Jur. N. S. 707.

Trustees disagreeing with beneficiaries : Disagreement between trustees and *cestuis que trust* is not a ground for removal by the Court: *Forster v. Davies*, 4 D. F. & J. 139 ; and see *Attorney-General v. Chapman*, 3 Bea. 255.

with co-trustee. But if some of the trustees refuse to act with a co-trustee, who is in their opinion not dealing fairly, the *cestui que trust* can obtain the removal of the latter : *Uvedale v. Ettrick*, 2 Ch. Ca. 130.

Corruption. Corrupt practices and malversations are good grounds for removal by action : *Mayor of Coventry v. Attorney-General*, 7 B. P. C. 235.

Dishonesty. A trustee, who had absconded, after being charged with forgery, was removed : *Millard v. Eyre*, 2 Ves. Jun. 94.

Destroying trust property. Trustees destroying the trust property may be removed, and be ordered to bear the costs of appointing others : *Exp. Greenhouse*, 1 Madd. 92.

Acquiescence by delay. The removal of a trustee must be asked for within a reasonable time : *Attorney-General v. Cuming*, 2 Y. & C. C. C. 150.

*Bonâ fide* refusal to exercise discretion. A refusal by trustees for no corrupt motive to exercise a purely discretionary power, is no reason for removing them : *Lee v. Young*, 2 Y. & C. C. C. 532.

Refusal to upset trust. Nor was a refusal by the trustee of a request by the settlor to take steps to rectify the settlement, under which the settlor found that certain intended contingent interests arose, held to be a ground for removal : *O'Keeffe v. Calthorpe*, 1 Atk. 17.

Scandal. In the pleadings of the plaintiff to remove a trustee, it is not scandalous or impertinent to challenge every act of the trustee as misconduct, nor to impute to him any

corrupt motive, nor to allege that his conduct is the vindictive consequence of some act of the *cestui que trust*, or of some change in his situation: *Portsmouth v. Fellows*, 5 Madd. 450.

But it is impertinent, and may be scandalous, to state any circumstance as evidence of general malice or personal hostility: *Ibid.*; and see *Reeves v. Baker*, 13 Bea. 436; and Daniell, Prac. 290 *et seq.*

As to the removal of trustees on the ground of bank-ruptcy, see *ante*, p. 209. Bank-ruptcy.

## CHAPTER XXVII.

### EFFECT OF TRUSTEE'S BANKRUPTCY.

Trust property not affected.

By the Bankruptcy Act, 1869, s. 15, property held by the bankrupt in trust for any other person is not divisible amongst his creditors.

Order and disposition clause.

But "all goods and chattels being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, being a trader, by the consent and permission of the true owner, of which goods and chattels the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner," are comprised in the property of the bankrupt divisible among his creditors, with a proviso "that things in action other than debts due to him in the course of his trade or business shall not be deemed goods and chattels within the meaning of this clause": s. 15, subs. 5.

Trust property not within clause.

It is held that a trustee being the true as well as the rightful owner, trust property is not within this clause: *Copeman v. Gallant*, 1 P. W. 314; *Exp. Martin*, 19 Ves. 491; *Joy v. Campbell*, 1 Sch. & L. 328; *Pinkett v. Wright*, 2 Hare, 120; *Murray v. Pinkett*, 12 Cl. & F. 764; *Re Bankhead*, 2 K. & J. 560; *Pennell v. Deffell*, 4 D. M. & G. 372; *Exp. Geaves*, 8 D. M. & G. 291; *Exp. Barry*, 17 Eq. 113; *Exp. Cox*, 1 Ch. D. 302.

Principle stated.

"Whatever be the nature of the investment (as shares held by a bankrupt chairman in trust for his company), into which the trust money invested by a trustee can be traced, unless the *cestuis que trust* are affected by the consent which the statute contemplates for the creation of



reputed ownership, it is clear that the money so invested does not pass to the assignees, but remains the property of the person for whom it was originally held: *Great Eastern Railway Co. v. Turner*, 8 Ch. 149, 153; *Re Caldwell*, 13 Eq. 188.

But if the forms of a trust are gone through merely in order to conceal the true ownership, the exemption of trust property from the order and disposition clause is barred: *Ibid.*; and see *Exp. Watkins*, 2 Mont. & A. 348; *Exp. Ord*, 2 Mont. & A. 724. Fraud.

### *Proof against Bankrupt Trustee.*

The remedy of the *cestui que trust* against a bankrupt trustee who has been guilty of a breach of trust, as where stock has been improperly sold, is to prove either for the sale moneys or for the price of the stock at the date of the bankruptcy: *Exp. Shakeshaft*, 3 B. C. C. 197; *Exp. Watson*, 2 V. & B. 414; *Exp. Gurner*, 1 M. D. & D. 497; *Exp. Fairchild*, 1 G. & J. 221; *Exp. Montefiore*, De G. 171, 9 Jur. 562. Breach of trust: selling stock.

Interest may also be proved for: *Bick v. Motly*, 2 M. & K. 312; *Moons v. De Bernales*, 1 Russ. 301. Interest.

If the money be traced into a mortgage, the *cestui que trust* may prove for the debt and also take the benefit of the mortgage *pro tanto*: *Exp. Geaves*, 25 L. J. Bk. 53; *Exp. Biddulph*, 3 De G. & Sm. 587. Mortgage.

Where the trust was to accumulate income, the whole amount of the accumulations which ought to have been made is provable: *Dornford v. Dornford*, 12 Ves. 127. Trust to accumulate.

Where the trustee is also equitable tenant for life, his interest is available for those in remainder in priority to other creditors: *Exp. Turpin*, 1 D. & C. 120; *Exp. King*, 2 M. & A. 410; *Jacobs v. Rylance*, 17 Eq. 341. Trustee's life interest impounded.

But if the trustee is legal tenant for life of certain of the property settled by the will, his life estate is not liable Not if legal life estate.

for his breach of trust with respect to other part of the property: *Fox v. Buckley*, 3 Ch. D. 511; and see *Egbert v. Butter*, 21 Bea. 560.

**Set-off.**

As to the right of the bankrupt to set off his interest against the debt arising from the breach of trust, see *Exp. Bishop*, 8 Ch. 718; *Exp. Stone*, *ibid.* 914.

**Breach of trust a simple contract debt. (32 & 33 Vict. c. 46.**

The debt arising from a breach of trust is a simple contract debt: *Lockhart v. Reilly*, 1 D. & J. 464; but the importance of this point is for many purposes destroyed by 32 & 33 Vict. c. 46, which places debts of all kinds upon an equal footing. See *post*, p. 332.

***Cestui que trust* may petition.**

The debt occasioned by a breach of trust will now be a good petitioning creditor's debt: Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 6; and see *Exp. Sturt*, 13 Eq. 309.

**One of several trustees bankrupt.**

Where one of several trustees becomes bankrupt, the *cestui que trust* may prove against his estate, leaving him to recoup himself against his co-trustees: *Exp. Shakeshaft*, 3 B. C. C. 197; *Exp. Beilby*, 1 G. & J. 175.

**Where all trustees bankrupt.**

If all are bankrupt, proof to the extent of the debt will be allowed against all their estates: *Keble v. Thompson*, 3 B. C. C. 112; *Exp. Poulson*, De G. 79.

**Proof against firm of bankrupt trustee.**

The right of proof against the assets of a bankrupt firm to which the trustee has lent trust money, extends to the estate, joint or separate, of all who have participated in the breach of trust: *Exp. Barnenall*, 6 D. M. & G. 795; *Exp. Adamson*, 8 Ch. D. 807, 820.

As to following trust money lent to a bankrupt firm by a trustee not a partner in it, see *post*, p. 325.

**Effect of discharge.**

The discharge of a bankrupt trustee does not release him from the consequences of his breach of trust: Bankruptcy Act, 1869, s. 49. As to the effect of his bankruptcy on the liability of the trustee to attachment for non-payment of money ordered to be paid into Court, see *post*, p. 278.

**Removal.**

As to the removal of trustees on the ground of bankruptcy, and the appointment of new trustees in the place of bankrupt trustees, see *ante*, p. 209.

## CHAPTER XXVIII.

### TENANT FOR LIFE'S RIGHT TO POSSESSION.

THE trustee has no right to keep the *cestui que trust* out of possession of the estate: *Brown v. How*, Barnardiston, 357.

It is not of course that possession is given to the tenant for life under a devise. The intention of the testator is to be considered, and where the *cestui que trust* for life was a *feme covert*, and two of the trustees were entitled in remainder, it was held that, as the testator thought fit to give the management to them, and not to entrust the estate to the permanent management of the *cestui que trust*, it was not for the Court to take it away from the trustees: *Tidd v. Lister*, 5 Madd. 429; but see *Horner v. Wheelwright*, 2 Jur. N. S. 367, where there was separate use, and *Hoskins v. Campbell*, W. N. 1869, 59, where the married woman was separated from her husband.

But in the case of a family mansion, or where it appears to be for the benefit of the *cestui que trust* that he should occupy the property personally, possession should be given to him: *Tidd v. Lister*, *supra*.

A *cestui que trust* in possession may distrain and serve notices to quit upon tenants: *Parker v. Manning*, 7 T. R. 537; *Blake v. Foster*, 8 T. R. 487; *Jones v. Phipps*, L. R. 3 Q. B. 567.

And when the *cestui que trust* who is entitled to receive the rents and profits is in possession, the Court will not take that receipt away, unless there has been some gross mismanagement by the *cestui que trust*: *Attorney-General v. Gore*, Barnard 145, 150; and see

Where will shows contrary intention.

Personal occupation intended.

Powers of tenant for life in possession.

Gross mismanagement by tenant for life.

*Perrot v. Perrot*, 3 Atk. 94; *Garth v. Cotton*, 1 Ves. Sen. 555.

Trustee  
turning out  
*cestui que*  
trust.

Trustees who colluded with the remainderman to turn the tenant for life out of possession, and received the rents from the tenants, some of whom had failed to pay, were decreed to make good the whole rents which the tenants were bound to pay: *Kaye v. Powel*, 1 Ves. Jun. 408.

Where  
charges to  
be kept  
down.

Where there are payments to be made by the trustees, the tenant for life may be let into the receipt of the rents upon terms. Thus, where annuity deeds, granting a term to trustees, with powers of distress and entry, were executed by the tenant for life, he was allowed to take the rents as agent, and in the names, of the trustees, but so that they might re-enter if the annuitants became in arrear: *Jenkins v. Milford*, 1 J. & W. 629; and see *Hoskins v. Campbell*, W. N., 1869, 59.

Or upon terms of his giving sufficient security: *Baylies v. Baylies*, 1 Coll. 547. In *Blake v. Bunbury*, 1 Ves. Jun. 514, it will be seen that the tenant for life himself had the legal estate.

Where  
tenant for  
life wrong-  
fully fells  
timber.

An equitable tenant for life *permitted* by the trust to receive the rents and profits, was allowed after a wrongful fall of timber to retain possession upon an undertaking to cut no more without the consent of the trustees: *Denton v. Denton*, 7 Bea. 388; but see *Pugh v. Vaughan*, 12 Bea. 517, in which, however, the trust was to "pay" the rents to the tenant for life. See further as to waste by tenant for life, notes to *Garth v. Cotton*, 1 W. & T. L. C. Eq. 751.

Right to  
vote.

The *cestui que trust*, whether in possession or not, is entitled to vote for members of Parliament: 6 Vict. c. 18, s. 74; and see *Gainsford v. Freeman*, L. R. 1 C. P. 129; *Trotter v. Watson*, L. R. 4 C. P. 434; *Wallis v. Birks*, L. R. 5 C. P. 222. And see Rogers on Elections, 35—40.

But the trustee, as having the legal estate, votes for coroners: *Reg. v. Day*, 3 E. & B. 859.

## CHAPTER XXIX.

### CONVEYANCE BY TRUSTEES BY ORDER OF CESTUIS QUE TRUST.

TRUSTEES who hold the trust property for beneficiaries who are absolutely entitled must convey or transfer as they direct, and if they refuse without sufficient reason must pay the costs of an action to compel them so to do : *Jones v. Lewis*, 1 Cox, 199 ; *Willis v. Hiscox*, 4 M. & Cr. 197 ; *Hampshire v. Bradley*, 2 Coll. 34.

Duty of trustees to convey.

When the equitable owner has conveyed his interest, the trustee must clothe the grantee with the legal title : *Angier v. Stannard*, 3 M. & K. 566.

After sale by *cestui que trust*.

If *cestuis que trust* are to consent to a sale, the trustee must not, without cause, refuse to sell and convey to a purchaser proposed by them : *Palairer v. Carew*, 32 Bea. 564.

Upon sale to nominee of beneficiaries.

If, notwithstanding the loss of a document supposed to have accompanied the deed vesting the estate in the trustee, nothing appeared to show that the beneficial interest was less than absolute, the trustee was held bound to convey at the request of the beneficiary : *Penfold v. Bouch*, 4 Ha. 271.

Where *cestui que trust* has apparent title.

A married woman entitled to her separate use, and not restrained from anticipation, may call upon the trustees to convey to her husband or otherwise : *Thorby v. Yeats*, 1 Y. & C. C. C. 438 ; and see *post*, 257.

Separate use.

Under a devise to a trustee for a female's separate use without power of anticipation, with remainder to the use of her children as tenants in common in tail, with remainders over, the woman on becoming discoverd can compel a conveyance ; for the trustee would be protector

of the settlement only so long as the legal estate is required to be in him, and the trust ceases when she becomes *sui juris* and discover: *Buttanshaw v. Martin*, Johns. 89.

Inquiries  
by trustee.

The trustee must of course inquire whether the title of the *cestuis que trust* is complete: *Goodson v. Ellisson*, 3 Russ. 583.

And he must show that he has tried to discover whether the title is affected by transactions which might arouse suspicion; and if he refuses to convey without inquiry, and the title was in fact good, he is within the rule above stated as to his liability to the costs: *Firmin v. Pulham*, 2 De G. & Sm. 99; *Hannah v. Hodgson*, 30 Bea. 19; *King v. King*, 1 D. & J. 663; but see *Campbell v. Home*, 1 Y. & C. C. C. 664.

Incorrect  
recitals in  
deed.

Trustees are justified in refusing to execute a deed containing incorrect recitals, but not in refusing to execute one containing no recitals in a case where everyone interested concurs: *Hartley v. Burton*, 3 Ch. 368.

Conveyance  
according  
to title.

They cannot be asked to convey the fee to a mere tenant in tail: *Saunders v. Nevil*, 2 Vern. 428.

Several  
convey-  
ances.

Nor to convey the estate piecemeal at various times: *Goodson v. Ellisson*, 3 Russ. 594.

Misdescrip-  
tion.

Or by a description other than that by which it was conveyed to them: *Ibid.*

Form of  
action by  
purchaser.

It seems that a purchaser may obtain the legal estate from the trustee in an action against him without joining the beneficiaries: *Goodson v. Ellisson*, 3 Russ. 583; *Holford v. Phipps*, 3 Bea. 434.

Counsel's  
advice.

As to the effect of acting upon counsel's opinion in refusing to convey, see *post*, p. 232.

Bare trust-  
tee.

It would seem that a trustee to whose office no duties were originally attached, but who would on the requisition of his *cestuis que trust* be compellable in equity to convey the estate to them or by their direction, is a "bare trustee" within the meaning of the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 48: *Christie v. Ovington*, 1 Ch. D. 279; and see further as to the meaning of the term "bare trustee," *Lysaght v. Edwards*, 2 Ch. D. 499.

A vendor of real estate, who died before conveyance and receipt of the purchase-money, was held not to be a "bare trustee" within the same section, and his heir-at-law and not his legal personal representative to be the proper person to convey : *Morgan v. Swansea Urban Sanitary Authority*, W. N., 1878, 179.

And if the heir is an infant, there must still be an action in such a case to declare the infant a trustee, and for a vesting order : *Ibid.*

## CHAPTER XXX.

### CUSTODY OF TITLE-DEEDS.

Right of equitable tenant for life.

As an incident to the possession of the estate, the *cestui que trust* for life has a right to retain the title-deeds, unless it is suggested that they are endangered by remaining in such custody: *Taylor v. Sparrow*, 4 Giff. 706; *Langdale v. Briggs*, 8 D. M. & G. 416; *Leathes v. Leathes*, 5 Ch. D. 221.

Where rents received by trustees.

But if the trustees are to receive the rents and pay them to the tenant for life, they may retain the deeds: *Garner v. Hannington*, 22 Bea. 627; and see *Stanford v. Roberts*, 6 Ch. 310.

Where taken out of country.

Where the tenant for life had on one occasion taken the deeds out of the jurisdiction, but afterwards, when ordered, brought them into Court, they were not delivered out to him again; *Jenner v. Morris*, 1 Ch. 603. Turner, L. J., was inclined to allow their delivery upon security being given by the tenant for life: *Ib.*

Order to bring deeds in on misconduct.

In a case where the equitable tenant for life was allowed to remain in possession upon terms after wrongfully cutting timber, he was also ordered to bring the deeds into Court: *Denton v. Denton*, 7 Bea. 388.

Where action pending.

Where the estate is subject to a pending action, the Court will not part with the deeds in favour of the equitable tenant for life if it sees reason for retaining them: *Stanford v. Roberts*, 6 Ch. 307; *Leathes v. Leathes*, 5 Ch. D. 221.

Misuse of deeds to obtain

Whether a trustee who delivers deeds to a tenant for life, and so enables him to make a mortgage in fee, is



liable to those in remainder who are damnified by such an act, see *Evans v. Bicknell*, 6 Ves. 174. mortgage in fee.

Any person entitled to a vested interest in remainder may bring an action against the tenant for life, for the sole purpose of production and inspection of deeds in his possession : *Davis v. Dysart*, 20 Bea. 414. Action by remainder-man for production.

But the Court has a discretion as to granting such relief : *Lempster v. Pomfret*, Amb. 154, 1 Dick. 238 ; *Davis v. Dysart*, *supra*.

And the relief will not be granted if the title of the remainderman is not clear : *Pennell v. Dysart*, 27 Bea. 542.

Trustees must produce all cases and opinions of counsel (not intended only for their own defence) to the *cestui que trust* : *Wynne v. Humberston*, 27 Bea. 421. Cases and opinions.

As to the liability of trustees for the safety of securities in the custody of their co-trustees, see *ante*, p. 100.

## CHAPTER XXXI.

### DUTY OF TRUSTEES TO KEEP ACCOUNTS AND FURNISH INFORMATION.

Accounts must be ready ;

TRUSTEES must be constantly ready with their accounts : *Hardwicke v. Vernon*, 14 Ves. 510 ; *Freeman v. Fairlie*, 3 Mer. 29, 43.

must not be mixed up with other accounts.

Such accounts must be clear and distinct accounts referring to the trust property ; and if the trustee mix the trust accounts with his own, he cannot therefore refuse to produce his own books ; and if he have partners, and they have allowed him to use the partnership books for the purpose, or have used any of the trust-money in their trade, the partnership books must be produced : *Freeman v. Fairlie*, *supra*.

If a trustee has allowed his co-trustee to keep accounts, which turn out to be falsified, they will bind him : *Horton v. Brocklehurst*, 29 Bea. 504.

Costs on refusal to account.

If the inability or refusal of the trustee to account renders a suit necessary, he must pay the costs of it : *Pearse v. Green*, 1 J. & W. 135 ; *Newton v. Askew*, 11 Bea. 145, 152 ; *Jefferys v. Marshall*, W. N., 1870, 227.

Discretion as to costs.

The matter of costs, however, is within the discretion of the Court, and if there has been no actual misconduct, the Court may limit the payment of costs to the period of the bringing the action, or of the hearing, or otherwise according to the circumstances of the case : *Springett v. Dashwood*, 2 Giff. 521 ; 7 Jur. N. S. 93 ; and see *Ottley v. Gilby*, 8 Bea. 602 ; *Thompson v. Clive*, 11 Bea. 475 ; *White v. Jackson*, 15 Bea. 191,

So where there was a refusal to account except upon the terms of being paid "costs, charges, and expenses for all necessary correspondence, journeys, and attendances" for various purposes, the trustee was ordered to pay the costs up to the hearing: *Underwood v. Trower*, W. N., 1867, 83. Refusal unless expenses paid.

By 15 & 16 Vict., c. 86, s. 54, where accounts are required to be taken, the Court may give special directions as to the mode of taking and vouching them; particularly that books of account may be taken as *primâ facie* evidence of the truth of their contents. Directions as to taking accounts.

Under this enactment, old trust accounts to which the *cestui que trust* had had access, were allowed to be taken as *primâ facie* correct: *Banks v. Cartwright*, 15 W. R. 417. Admitting old accounts without proof.

It is also the duty of trustees to afford to their *cestuis que trust* accurate information as to the condition and disposition of the trust property: *Clarke v. Ormonde*, 1 Jac. 120; *Walker v. Symonds*, 3 Swans. 58. Furnishing information.

If trustees withhold information as to the nature of the title of their *cestuis que trust*, so that the latter are unable to put into force rights which they have against third parties, the trustees must recoup them the loss occasioned by their neglect to give the necessary information: *Burrows v. Walls*, 5 D. M. & G. 233.

## CHAPTER XXXII.

PAYMENT BY TRUSTEES TO CESTUIS QUE TRUST.—RELEASES.—INDEMNITY.—LIABILITY FOR CO-TRUSTEES.—DE FACTO TRUSTEES.

TRUSTEES are justified in refusing to pay over the trust fund to persons claiming it beneficially, or to those claiming under them, if by so doing they would incur a responsibility; and unless the motive of the trustees is obviously vexatious, they have a right to the protection of the Court in the execution of the trust, and if a reasonable question arises as to the distribution of the property, to obtain that protection without being liable for costs: *Taylor v. Glanville*, 3 Madd. 178; *Curteis v. Candler*, 6 Madd. 123; *Goodson v. Ellisson*, 3 Russ. 583.

Trustee's  
costs of  
appeal.

This right to costs does not apply to an appeal by the trustees: *Rowland v. Morgan*, 13 Jur. 23; in the case of bankruptcy trustees, *Exp. Angerstein*, 9 Ch. 479; and official liquidators, *Buckley*, 227.

Fraudulent  
withhold-  
ing.

A trustee who on untenable grounds withholds trust money from his *cestui que trust*, may commit what in equity may be considered a fraud, without being chargeable with personal fraud: *Thomson v. Eustwood*, L. R. 2 App. Ca. 215.

Refusal  
from ignor-  
ance of  
law.

If a trustee refuses to pay without the sanction of the Court, merely from ignorance and not from a bad motive, he will not be made to pay costs: *Knight v. Martin*, 1 R. & My. 70.

So, it being proved that trustees did not know the Scotch law, by which others than those to whom they paid were entitled, they were held not to be liable for paying

to those entitled by English law: *Leslie v. Baillie*, 2 Y. & C. C. C. 91.

An absolute discretion to postpone payment of shares of residue may be good against the creditors of the residuary legatees: see *Chambers v. Smith*, L. R. 3 App. Ca. 795.

Discretion to postpone payment.

A trustee, paying on an erroneous supposition that the recipient is immediately entitled, may recover the amount out of future income or other trust property of the person so wrongfully paid: *Livesey v. Livesey*, 3 Russ. 287; *Dibbs v. Goren*, 11 Bea. 483; *Eaves v. Hickson*, 30 Bea. 136.

Recovery of sums paid in error.

And if a share in respect of which the mistake was made has been assigned for value, the assignee's interest is also subject to recoup the money: *Dibbs v. Goren*, 11 Bea. 483; and see *White & Tudor*, L. C. Eq., pp. 799 *et seq.*

Against assignee for value.

As to the refunding of legacies by executors and creditors, see *Wms. Exors.*, 1450 *et seq.*; *Lewin*, p. 312; and see *Jervis v. Wolferstan*, 18 Eq. 18, and *Rogers v. Ingham*, 3 Ch. D. 351.

Refunding legacies.

A *cestui que trust* who has received more money, or more income, than he is entitled to, is liable at any distance of time at the suit of another *cestui que trust*, to refund the difference: *Harris v. Harris*, 29 Bea. 110; *Baynard v. Woolley*, 20 Bea. 583; *Davies v. Hodgson*, 25 Bea. 177; *Griffiths v. Porter*, 25 Bea. 236; *Prowse v. Spurgin*, 5 Eq. 99; *Jervis v. Wolferstan*, 18 Eq. 18.

Refunding at suit of other beneficiaries.

But where one of several legatees has received his share the others cannot call upon him to refund it if the estate is subsequently wasted: *Peterson v. Peterson*, 3 Eq. 111; *secus*, if previously wasted, *Ibid.*

As to overpayment in a suit, see *Davis v. Frowd*, 1 M. & K. 200; *Sawyer v. Birchmore*, 2 M. & Cr. 611; *Williams Exors.*, 1450 *et seq.*

Where, in contravention of the rule in *Howe v. Lord Dartmouth* (*ante*, p. 91 *et seq.*), trustees have paid the tenant for life the entire income of wasting property, they may have an inquiry in the same suit in which they are

Recovering revenue of unsold wasting property.

made liable, to recover the amount overpaid to the tenant for life, from his estate : *Hood v. Clapham*, 19 Bea. 90.

Misrepresentation by trustee of rights of *cestui que trust*.

If, on the footing of a supposed illegitimacy, the title of the *cestui que trust* is disputed and denied by the trustee, and the former is thereby induced to accept from the trustee a smaller sum than that to which he is entitled under the will, and by deed to release the trustee from the payment of his share, equity will not allow such a transaction to stand : *Thomson v. Eastwood*, L. R. 2 App. Ca. 215.

Acting an opinion of counsel no excuse.

Trustees are not excused from the consequences of a wrong payment because they have acted on the advice of counsel, however eminent : *Doyle v. Blake*, 2 Sch. & L. 243 ; *Peers v. Ceeley*, 15 Bea. 211 ; *Devey v. Thornton*, 9 Ha. 232 ; *Re Knight*, 27 Bea. 45, 49 ; *Boulton v. Beard*, 3 D. M. & G. 611 ; and see *Re Cull*, 20 Eq. 561 ; and *Rogers v. Ingham*, 3 Ch. D. 351.

Costs in such case.

But if they have acted *bonâ fide*, costs would probably not be ordered against them in such a case : *Angier v. Stannard*, 3 M. & K. 566.

Payment to representative of person entitled.

Trustees must not refuse to pay because the beneficiary to receive is dead, and the money is receivable by his personal representative, who might misapply it : *Smith v. Bolden*, 33 Bea. 262 ; *Hayes v. Oatley*, 14 Eq. 1.

To beneficial appointees under a power.

Where the donee of a general power appoints the property to certain persons beneficially, the original trustees are bound to act in carrying the appointment into execution : *Re Philbrick*, 34 L. J. Ch. 368 ; and see *Re Hoskin*, 5 Ch. D. 229.

To trustees for such appointees.

But if the donee appoints the property to trustees, those trustees are entitled to receive the property to be held upon the trusts declared by the donee : *Re Philbrick*, 34 L. J. Ch. 369 ; *Hayes v. Oatley*, 14 Eq. 1 ; and see *Re Hoskin*, *supra*.

To executors appointed by *feme covert* under general power.

Where a married woman makes a will under a power, and appoints executors, as she could make the will only under the power, and could have appointed executors only for the purpose of administering the property, she must be

considered to have appointed the property to the executors as trustees, who therefore take away from the original trustees the duty of administering the fund: *Re Philbrick*, 34 L. J. Ch. 368; *Re Hoskin*, *supra*; and see *Platt v. Routh*, 3 Bea. 257, 6 M. & W. 756, 791, 10 Cl. & F. 257.

Where there has been an obviously good appointment trustees must not refuse to pay under it: *Campbell v. Home*, 1 Y. & C. C. C. 664. Appointment *primâ facie* good.

Where persons claim in default of appointment, trustees are entitled to evidence that no appointment has been made: *Re Wyllly*, 28 Bea. 458. Evidence of default of appointment.

But information to that effect by the solicitor to the parties is sufficient: *Re Cull*, 20 Eq. 561.

In these cases of payments by trustees to executors or other trustees, a simple receipt without a release is all they are entitled to: *Re Foligno*, 32 Bea. 131; *Re Hoskin*, 5 C. D. 229; see *infra*, p. 236. Receipt sufficient.

Trustees may pay on a *primâ facie* title, unless they have notice of a better title: *Cothay v. Sydenham*, 2 B. C. C. 391. Payment on *primâ facie* title.

Unless the deed, under which the payment is to be made, is on the face of it void, *e.g.*, as a fraud upon a power, the trustee must not refuse to account to the appointees under it, until it is upset by a suit for that purpose: *Beddoes v. Pugh*, 26 Bea. 407, 417. Title unimpeached by action.

Of course notice of a fraud intended to be committed by the receiving trustee justifies non-payment: *Sheridan v. Joyce*, 7 I. Eq. R. 115. Notice of intended fraud.

If a person gives notice to trustees to pay to him in respect of a charge, and when told to make good his claim in a Court, he neglects to do so, the trustees may pay to the *cestui que trust*: *Lonergan v. Stourton*, 11 W. R. 984. Calling on claimant to establish claim.

It has been held, that where a person is absolutely entitled to a money payment, payment to a trustee for him is a wrongful payment: *Pritchard v. Langher*, 2 Vern. 197; and see *Baldwin v. Billingsley*, 2 Vern. 539. Payment to trustee for one entitled.

Payment of small sums without administration ; It seems that trustees would be justified in paying shares of deceased residuary legatees, each share being under £20, or thereabouts, to their husbands, wives, or next of kin, without taking out administration : *Hinings v. Hinings*, 2 H. & M. 32 ; *Re Jones*, W. N., 1866, 65 ; *Re Ranking*, W. N., 1868, 243 ; *Callendar v. Teasdale*, 3 W. R. 289.

or under-taking. And without any undertaking to apply such sums as assets of the intestate if called upon to do so : *King v. Isaacson*, 9 W. R. 369.

Declaratory decree without consequential directions. 15 & 16 Vict. c. 86, s. 50. Under s. 50 of 15 & 16 Vict., c. 86, the Court will declare the rights of parties in an action which does not seek consequential directions.

Construction of section. This enactment has been held not to apply where no consequential relief could be given : *Jackson v. Turnley*, 1 Drew. 617 ; *Rooke v. Kensington*, 2 K. & J. 753 ; *Bristow v. Whitmore*, 4 K. & J. 743.

But this view has been considered to be too narrow : *Cox v. Barker*, 3 Ch. D. 370.

Future rights. Future reversionary or contingent rights will not be declared under the section : *Langdale v. Briggs*, 8 D. M. & G. 391, 428 ; *Garlick v. Lawson*, 10 Hare, App. xv. ; *Pennell v. Dysart*, 27 Bea. 542 ; *Dowling v. Dowling*, 1 Ch. 613.

Rights of persons under disability. Nor will the Court affect the rights of persons under disability : *Webb v. Byng*, 8 D. M. & G. 633.

Duty after notice of assignment. When trustees have received notice of assignments they cannot require a release from the assignor before paying the assignee, and they must not refuse payment if the acts of the beneficiary have raised mere equities in which they are not concerned : *Re Foligno*, 32 Bea. 131.

Assignee's mode of securing fund. Those entitled by assignment of equitable interests can obtain perfect security, besides giving notice, in three ways : by obtaining a distringas on the funds ; by having their deed, if any, endorsed on the settlement ; or, by obtaining a transfer of the funds into Court : *Phipps v. Lovegrove*, 16 Eq. 80, 90.

Inquiry by New trustees are not bound to inquire (for the Court



never does) of the old ones, whether they have received notice of any incumbrance : *Ibid.*

new trustees as to notices.

If a trustee is directed by the written authority of a *cestui que trust* to pay money to a third person, he should see to the reality of the authority, for rights of parties are not to be altered by the fraud of strangers : *Ashby v. Blackwell*, 2 Ed. 299, 302.

Genuine-ness of power of attorney.

So the trustee paying on manufactured evidence, like a forged marriage certificate, is liable to pay again : *Eaves v. Hickson*, 30 Bea. 136 ; and see *Bostock v. Floyer*, 1 Eq. 26 ; *Hopgood v. Parkin*, 11 Eq. 74 ; *Sutton v. Wilders*, 12 Eq. 373, and *ante*, p. 142.

Forged evidence of title.

Trustees are authorised to pay on a power of attorney given by a *cestui que trust*, unless they know that it is revoked by his death : 22 & 23 Vict., c. 35, s. 26 (Lord St. Leonards' Act).

Power revoked by death.

As to the difficulty which arises where the power of attorney is given by a tenant for life, see *Re Jones*, 3 Drew. 679, and *Lewin*, p. 311, n. (b).

It is now settled that a husband, entitled to a life interest in the property of his wife, does not forfeit it in consequence of the dissolution of the marriage by reason of his own misconduct : *Fitzgerald v. Chapman*, 1 Ch. D. 563 ; *Burton v. Sturgeon*, 2 Ch. D. 318, overruling *Jessop v. Blake*, 3 Giff. 639, *Swift v. Wenman*, 10 Eq. 15, and *Fussell v. Dowding*, 14 Eq. 421, and following the principle of *Evans v. Carrington*, 2 D. F. & J. 481.

Husband's interest under settlement not forfeited on divorce.

If a person has not been heard of for seven years, there is a presumption of law that he is dead ; and those who found a right upon a person having survived a particular period, must prove that fact affirmatively by evidence, for that is not a presumption of law, but of evidence ; and though there is also no presumption of law in favour of life, an inference of fact may be drawn that a person alive and in health at a given date was alive a short time afterwards : *Doe v. Nepean*, 5 B. & Ad. 86, 2 M. & W. 894 ; *Re Phené*, 5 Ch. 139 ; *Re Lewes*, 6 Ch. 356 ; *Hick-*

Presumption of death.

*man v. Upsall*, 20 Eq. 136, 2 Ch. D. 617; and see *In the Goods of Nicholls*, L. R. 2 P. & D. 461.

Default of  
next of  
kin.

Payment to the Crown in default of next of kin should not be made without the authority of the Court, or at least the fullest investigation: *Turner v. Maule*, 3 De G. & S. 497.

### *Release by Cestuis que Trust.*

Trustees  
cannot  
insist on  
release

Trustees have a right to refuse to pay the funds over to the party entitled to them, unless a full discharge is given to them, but they cannot generally insist on a release: *Chadwick v. Heatley*, 2 Coll. 137; *Re Wright*, 3 K. & J. 419.

under seal,  
when.

They are, it seems, in any case, not entitled to a release under seal unless the trust was created under seal: *Re Wright*, *supra*.

Misrepresentation.

A release obtained by a misrepresentation by the trustee of the rights of the *cestui que trust*, will be set aside: *Thomson v. Eastwood*, L. R. 2 App. Ca. 215.

Course  
where  
accounts  
disputed.

If the *cestui que trust* refuses to admit that the account is correct, and to give a discharge, the trustees would be justified in having the accounts taken by the Court, though that course is not to be encouraged as beneficial to the *cestuis que trust* in general: *Ibid*.

Payment  
under  
express  
trust.

It has also been declared that in the case of a declared trust, where the trust is apparent on the face of the deed, and the trustee is paying either the interest or the capital of the fund, if he is paying in strict accordance with the trusts, he has no right to require a release under seal: *King v. Mullins*, 1 Drew. 308; and see *Warter v. Anderson*, 11 Hare, 301.

Under  
parol trust.

But where there is no deed, and only a verbal expression of the trusts, and nothing to show the amount of the trust fund, the trustee may demand a release: *King v. Mullins*, *supra*.

Especially if he has been asked to do what is not in strict accordance with the trusts: *Ibid*. See on this case Lewin, p. 314.

A release is, of course, no protection if the parties are not cognisant of all their rights; *Walker v. Symonds*, 3 Sw. 73; *Wedderburn v. Wedderburn*, 4 M. & Cr. 41; *Munch v. Cockerell*, 5 M. & Cr. 179; *Fowler v. Wyatt*, 24 Bea. 232.

Release not binding if rights unknown,

A release is binding only to the extent of the matter especially included in it: *Anon.*, 31 Bea. 310, and see cases cited in *Lindo v. Lindo*, 1 Bea. 496.

or, as to things not stated in it.

Trustees, on paying money to other trustees, are not entitled to any release, but only to an acknowledgment of the receipt of the money paid: *Re Cater*, 25 Bea. 366; *Re Hoskin*, 5 Ch. D. 229.

Release on payment to other trustees.

Where money is due to *cestuis que trust* who have settled it, the trustee is entitled to a release from the *cestui que trust*: *Re Cater*, *supra*.

To *cestuis que trust* who have settled.

Payment into Court in an administration suit or otherwise, is a sufficient indemnity, and no other release can be demanded: *England v. Tredegar*, 35 Bea. 256.

After payment into Court.

For Forms of Releases, see 5 Dav. Prec., pt. II., p. 626 *et seq.*

Forms of release.

### *Indemnity to Trustees.*

By s. 31 of Lord St. Leonards' Act (22 & 23 Vict., c. 35), every trust instrument, without prejudice to the clauses actually contained therein, is now deemed to contain a clause to the effect that the trustees shall be respectively chargeable only for such moneys and securities as they shall respectively receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be accountable only for their own acts, receipts, neglects, or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited.

Statutory indemnity.

It will be seen from the cases cited below that in effect, even before the Act, the doctrine of the Court afforded as much protection, as is secured by the clause in the Act or in its usual form in settlements or wills to non-receiving trustees: *Worrall v. Harford*, 8 Ves. 8; *Dawson v. Clarke*,

Effect of usual indemnity clause.

18 Ves. 254; *Bone v. Cook*, McClel. 168; *Hanbury v. Kirkland*, 3 Sim. 265; *Moyle v. Moyle*, 2 R. & M. 710; *Drosier v. Brereton*, 15 Bea. 221; *Dix v. Burford*, 19 Bea. 409; *Rehden v. Wesley*, 29 Bea. 213.

Special indemnity clause.

Lord Romilly thought that the clause would not avail, unless it provided that the trustee should not be liable for any breach of trust, unless he thereby obtained a personal advantage: *Brumridge v. Brumridge*, 27 Bea. 5.

What breaches of trust may be met by special indemnity.

And a clause which provided for indemnity in the three cases of liability, namely, where being the recipient, the trustee hands over money without securing its due application; where he allows a co-trustee to receive money without making due inquiry as to his dealings with it; and where he becomes aware of a breach of trust and abstains from taking the needful steps to obtain restitution or redress—was held sufficient to excuse a trustee from misapplication by his co-trustee: *Wilkins v. Hogg*, 8 Jur. N. S. 25, affirming 3 Giff. 116.

But he would still be liable for collusion, or upon knowledge or suspicion of an intended breach of trust: *Ibid.*

### *Liability for Co-trustees.*

The principles on which the Court acts with regard to the liability of trustees for the acts of their co-trustees are now to be considered.

No liability for receipts of co-trustee though signing receipt for conformity.

Trustees are not liable for loss arising by the misapplication of money received by their co-trustee alone, though they may have signed a receipt for such money for the sake of conformity: *Townley v. Sherborn*, Bridg. 35; *Leigh v. Barry*, 3 Atk. 583; *Anon.*, 12 Mod. 560; *Brice v. Stokes*, 11 Ves. 319; *Re Fryer*, 3 K. & J. 317.

Distinction as to executors.

As to the distinction between the case of trustees and executors, see *Leigh v. Barry*, 3 Atk. 583, and the cases collected in n. (1), *ibid.*; *Chambers v. Minchin*, 7 Ves. 198; *Wms. Exors.*, p. 1821, *et seq.*

Trustee

It is for the trustee who desires to exonerate himself

from the inference that he received the money for which he signed the receipt, to prove that his co-trustee and not he actually received it: *Brice v. Stokes, supra*. must prove non-receipt.

This rule is unaffected by the absence of negative words in the settlement that they shall not be liable for the acts of one another: *Leigh v. Barry, supra*. Absence of negative words as to liability.

But if the trustees bind themselves jointly and severally to perform certain trusts, they cannot take advantage of the rule: *Ibid*. Joint and several liability.

The act of joining for the sake of conformity must be a necessary one, in order to exonerate the non-receiving trustee: *Brice v. Stokes, supra*; *Shipbrook v. Hinchinbrook*, 11 Ves. 253, 16 Ves. 477; and see *Fellows v. Mitchell*, 1 P. W. 82; *Heaton v. Marriot*, cited *ibid*.; as where a sale takes place under a power requiring the receipt of all the trustees to discharge the purchaser: *Brice v. Stokes, supra*. Joining for conformity must be necessary.

Where one of the trustees is a solicitor and receives the money, which was not properly receivable by him as solicitor but as trustee, his co-trustees are not liable for joining in the necessary receipt: *Re Fryer*, 3 K. & J. 317. Receipt of money by solicitor-trustee.

If trustees by conduct or acquiescence such as defined in *Wilkins v. Hogg*, (8 Jur. N. S. 25), as stated above (p. 238), contribute to the loss by allowing money to get into the hands of their co-trustees, and by taking no steps to see that it is properly secured, they will be chargeable: *Thompson v. Finch*, 22 Bea. 316, 323; *Brumridge v. Brumridge*, 27 Bea. 5; *Cowell v. Gatcombe, Ibid.* 568; *Ingle v. Partridge*, 32 Bea. 661. Exceptions to rule: acquiescence, &c.

So they must not allow a debt due from a co-trustee to remain unpaid: *Mucklow v. Fuller*, Jac. 198. Leaving debt from co-trustee unpaid.

Nor money to remain in trade when there is a trust to invest it: *Booth v. Booth*, 1 Bea. 125. Or leaving money in trade.

And if a trustee gets in the estate and misapplies it through the negligence of his co-trustee, the latter is liable: *Dix v. Burford*, 19 Bea. 409. Neglect to see property secured.

With regard to an undue retainer of money by one

trustee who becomes insolvent before the money is got in, see *Styles v. Guy*, 1 Macn. & G. 422; *Lincoln v. Wright*, 4 Bea. 427.

Executor  
upon trust.

It should be remembered that an executor who assents to, and sets apart, a specific legacy, becomes a trustee, and is liable to the consequences of his co-executor's default, and is subject to the above rules: *Phillipo v. Munnings*, 2 M. & Cr. 309; *Egbert v. Butter*, 21 Bea. 560; but not where the residue is unascertained: *Davenport v. Stafford*, 14 Bea. 331.

Inquiry as  
to invest-  
ment by  
co-trustee.

Trustees must not rely on the assurance of a co-trustee that the fund is properly invested; and even though the latter received it alone, if they do not ascertain the fact they will be liable: *Broadhurst v. Balguy*, 1 Y. & C. C. C. 16; *Hanbury v. Kirkland*, 3 Sim. 265; *Thompson v. Finch*, 22 Bea. 316; *Mendes v. Guedalla*, 2 J. & H. 259.

Leaving  
deeds or  
securities  
in hands of  
co-trustee.

There is not necessarily culpable negligence in leaving title deeds or securities in the hands of one of the trustees, who in receiving interest, &c., will be regarded as a trustee liable for breach of trust, and not as an agent of the other trustees: *Cottam v. Eastern Counties Rail. Co.*, 1 J. & H. 243; *Mendes v. Guedalla*, *supra*.

An arrangement that each of two trustees should retain a moiety of bonds transferable by delivery is improper, and each is liable in case of the other misappropriating those in his custody: *Lewis v. Nobbs*, 8 Ch. & D. 595.

Leaving  
deeds so  
that they  
can be  
dealt with.

But where a trustee is a debtor to the estate on an equitable mortgage by deposit of deeds, which his co-trustee allows him to retain, the latter is answerable: *Candler v. Tillett*, 22 Bea. 257.

As to the power of one of several trustees with deeds in his hands to make a title to a purchaser without notice, see *Ibid*.

### *Of the Liability of Voluntary and De Facto Trustees.*

Voluntary  
trustees.

When the relation of trustee and *cestui que trust* is once created, it matters not that the trustees have become so

merely from motives of kindness, or have themselves given the fund which they have afterwards lost by a bad investment: *Drosier v. Brereton*, 15 Bea. 221.

But the intention to create a mere voluntary trust of this kind must be complete and in nowise subject to revocation: *Bayley v. Boulcott*, 4 Russ. 345; *Rycroft v. Christy*, 3 Bea. 238. Creation of voluntary trust.

So the relation of trustee and *cestui que trust* may arise by a person becoming a trustee *de son tort*, or *de facto*: *Hennessey v. Bray*, 33 Bea. 96; and see *Aveline v. Melhuish*, 2 D. J. & Sm. 292; *Quinton v. Frith*, 1 R. 2 Eq. 396. Trustee *de facto*.

So a general devisee of real estate subject to a legacy, (so that the trust estates do not pass,) acting in the trusts, is a trustee within the exception of the Statute of Limitations: *Life Association v. Siddal*, 3 D. F. & J. 58; and see *Rackham v. Siddall*, 1 Macn. & G. 607. By acting.

A settlor under a marriage settlement, falsely reciting the payment of a sum of which the trusts are declared, becomes a trustee to all intents and purposes of that sum: *Stone v. Stone*, 5 Ch. 74. Settlor a trustee of funds not transferred.

All the consequences as to costs, and liability for wilful default, notwithstanding the usual indemnity clause, arise in these cases: *Drosier v. Brereton*, 15 Bea. 226; *Life Association v. Siddal*, *supra*. Extent of liability of trustee *de son tort*.

But neither the trustee, nor, after his decease, his estate, is liable for acts done by him in innocent ignorance of the title to the property: *Youde v. Cloud*, 18 Eq. 634. Excuse of ignorance.

As, where he is misled by statements made to him by his testator: *Ibid.*; *Fry v. Fry*, 27 Bea. 144; *Selby v. Bowie*, 9 Jur. N. S. 425.

A mere agent of the trustee, if he acts otherwise than as an agent, is liable to be charged as a trustee: *Morgan v. Stephens*, 3 Giff. 226; and see *Lee v. Sankey*, 15 Eq. 204. Agent becoming trustee.

But not if he has acted strictly as agent and in the ordinary course of business: *Re Bird*, 16 Eq. 203; *Barnes v. Addy*, 9 Ch. 244.

## CHAPTER XXXIII.

### OF THE RIGHTS OF THE CROWN WITH REFERENCE TO TRUSTS—TRUSTS OF FOREIGN PROPERTY.

- |  |   |
|--|---|
| Establish-<br>ing trust<br>against<br>Crown.                         | WHERE the legal estate becomes vested in the Crown by statute, or by operation of law, the trust may be decreed against it on a petition of right: <i>Chitty</i> , Prerog. of the Crown, 387, 391; <i>Petition of Right Act</i> , 1860, 23 & 24 Vict., c. 34. |
| Trust of<br>prize.   | The Sovereign may create a trust of prizes taken in war: <i>Alexander v. Duke of Wellington</i> , 2 R. & M. 35; 54 Geo. 3, c. 86, s. 2; 2 & 3 Vict., c. 53, s. 2.   |
| Cannot be<br>enforced<br>being<br>revocable.                         | But no action can be brought to enforce such a trust, which is by its nature revocable, and may be avoided by the restoration of the prize to the enemy: <i>The Elsebe</i> , 5 Rob. 173.  |
| Proof of<br>trust of a<br>pension.                                   | A grant of a pension by the Crown to an individual is a matter of bounty; and the royal intention that he should take it upon trust for another must be proved by the most cogent evidence: <i>Fordyce v. Willis</i> , 3 B. C. C. 577.                        |
| No trust of<br>a peerage.  | There can be no trust of a peerage, which is a possession personal to the grantee: <i>Buckhurst Peerage</i> , 2 App. Ca. 1.   |
| Sovereign<br>can make a<br>will: 39 &<br>40 Geo. 3,<br>c. 88, s. 10. | The Sovereign has a common law and a statutory right to make a will and thereby to create trusts of the privy purse, of moneys not employed for the public service, and of property held by him not in right of the Crown: 39 & 40 Geo. 4, c. 88, s. 10.      |
| Probate<br>thereof.  | Probate cannot, it appears, be granted of a royal will: <i>In the Goods of George III.</i> , 1 Add. 255; 3 Sw. & Tr. 199.   |
| Mode of<br>creating  | A trust of land declared by the Crown must be by  |



letters patent; a grant of freehold land to the Crown must be by deed inrolled; and a surrender of copyholds to the Crown must also be constituted matter of record by inrolment: Chitty, Prerog. of the Crown, 391.

trust of  
land by  
Crown.

The Crown is not bound by the Statute of Frauds: *Atlington v. Cann*, 3 Atk. 147.

Crown  
within  
Statute of  
Frauds.

The estate of a *cestui que trust* seised in fee does not escheat to the Crown, but vests in the trustee upon death intestate, and want of an heir: *Burgess v. Wheate*, 1 Ed. 177; *Taylor v. Haygarth*, 14 Sim. 16; *Cox v. Parker*, 22 Bea. 168.

No escheat  
of equit-  
able fee.

By s. 46 of the Trustee Act, 1850, legal estates are no longer liable to escheat or forfeiture to the Crown, or to any corporation, or lord of a manor, by reason of attainder or conviction for felony.

Abolition of  
escheat of  
legal estate.

An inquiry is directed by the Court to ascertain the fact of the convict's trusteeship: *Exp. Tyson*, 1 Jur. 281, 472.

Inquiry as  
to convict's  
trusteeship.

By the Trustee Extension Act (15 & 16 Vict., c. 55), s. 8, the Court may appoint new trustees in the place of convicts, or where there is no existing trustee.

New trustee  
in place of  
convict.

Escheat and forfeiture on felony (but not outlawry) of persons beneficially entitled, are abolished by 33 & 34 Vict., c. 23, s. 1; and the Crown vests their property in an administrator who holds it in trust for the felon, or his heirs, or representatives, with powers of management until his sentence has expired, or has been suffered: ss. 10—30.

Abolition  
of escheat  
of equitable  
estate.

By 11 Geo. 4 & 1 W. 4, c. 40, an executor is constituted a trustee for the next of kin, in default of whom the Crown will take, unless an intention appears that the executor should take beneficially. The contrary intention must appear from the will itself, and cannot be proved by evidence *aliunde*: *Love v. Gaze*, 8 Bea. 472; *Ellcock v. Mapp*, 3 H. L. C. 492; *Powell v. Merrett*, 1 Sm. & G. 383; *Juler v. Juler*, 29 Bea. 34; but see *Harrison v. Harrison*, 2 H. & M. 237; *Travers v. Travers*, 14 Eq. 275.

Failure of  
next of kin.

Where there is a trust for a charity, void under the Mortmain Act, and there are no next of kin, the executor

Of cha it-  
able trust.

is a trustee for the Crown: *Dacre v. Patrickson*, 1 Dr. & Sm. 182.

Right of  
widows.

The widow of the intestate takes half and the Crown takes half the estate: *Cave v. Roberts*, 8 Sim. 214.

Crown  
takes  
subject to  
debts, &c.

The Crown must take subject to debts, legacies, and costs, and cannot claim under an exoneration of the personal estate by a charge of debts on the real estate: *Dacre v. Patrickson*, and cases there cited, 1 Dr. & Sm. 187, *supra*; and see Theobald on Wills, 452.

Next of kin  
afterwards  
found.

If next of kin are subsequently discovered, the Crown is bound to repay with interest from the time when the payment of debts, &c., was completed: *Re Dewell*, 4 Dr. 269; *Attorney-General v. Köhler*, 8 Jur. N. S. 467.

Restoration  
of property.

On a memorial to the Treasury in proper cases the Crown will entertain the claims of illegitimate relatives of the deceased: *Robson v. Attorney-General*, 10 Cl. & F. 471.

Rights of  
Crown as  
to land of  
aliens.

The Naturalization Act, 1870 (33 Vict., c. 14), enables an alien to hold property both legally and equitably; but the Act is not retrospective; and the Crown is still entitled upon office found in the case of a trust of land (not converted in equity by a direction to sell) declared before the Act in favour of an alien: *Barrow v. Wadkin*, 24 Bea. 1; *Du Hourmelin v. Sheldon*, 4 M. & Cr. 525; *Sharp v. St. Sauveur*, 7 Ch. 351.

### *Of the Jurisdiction of the High Court as to Trusts of Foreign Property.*

Court acts  
*in per-  
sonam* and  
entertains  
action as  
to foreign  
property  
when trus-  
tee here.

If the trustee is within the jurisdiction of the High Court in England, as it acts *in personam*, the trust will be enforced by the High Court as well with respect to moveable as to immoveable property: *Kildare v. Eustace*, 1 Vern. 418; and see *Arglasse v. Muschamp*, 1 Vern. 75; *Toller v. Carteret*, 2 Vern. 495; *Foster v. Vassall*, 3 Atk. 589; *Angus v. Angus*, West, 23; *Cranstown v. Johnston*, 3 Ves. 170; *Jackson v. Petrie*, 10 Ves. 165.

Colonial  
property.

The same principle applies to colonial property subject to trusts: *Roberdeau v. Rous*, 1 Atk. 543.

In order to apply the rule it is necessary that privity be shown, or a contract proved between the parties: *Norris v. Chambres*, 3 D. F. & J. 584.

Privy  
between  
parties.

It appears that the High Court will not assume jurisdiction with reference to *lands* abroad, if the *lex loci rei sitæ* has been infringed in the constitution of the alleged relation between the parties: *Waterhouse v. Stansfield*, 9 Hare, 234; *Nelson v. Bridport*, 8 Bea. 547.

As to realty  
*lex loci*  
must not  
have been  
infringed.

And the Court will direct an inquiry as to the *lex loci*, and act upon its result: *Waterhouse v. Stansfield*, 9 Hare, 239, 10 Hare, 254; *Martin v. Martin*, 2 R. & M. 524; but see *Elliott v. Minto*, 6 Madd. 16.

Inquiry as  
to *lex loci*.

The Court will also not interfere if the matter is the subject of litigation in a foreign Court which has the means of deciding upon and enforcing the rights of the parties: *Norris v. Chambres*, 3 D. F. & J. 584; *Doss v. Secretary of State for India*, 19 Eq. 509; *Reiner v. Salisbury*, 2 Ch. D. 378.

Where  
matter  
is before  
competent  
foreign  
Court.

Nor will the Court entertain an action by a foreigner resident abroad against another foreigner respecting property abroad: *Matthæi v. Galitzin*, 18 Eq. 349.

Foreigner  
against  
foreigner.

Where the defendants are here and the remedy by English law appears more adequate, an injunction will be granted to restrain proceedings in a foreign or colonial Court: *Bushby v. Munday*, 5 Madd. 307; *Beckford v. Kemble*, 1 S. & S. 7; *Bunbury v. Bunbury*, 1 Bea. 318; *Baillie v. Baillie*, 5 Eq. 175; *Re Macnichol*, 19 Eq. 81; but see *Breadalbane v. Chandos*, 2 M. & Cr. 711.

Defendant  
here, and  
better  
remedy.

And after a suit to enforce trusts has been commenced in the High Court, unnecessary identical proceedings abroad will be restrained: *Harrison v. Gurney*, 2 J. & W. 563; *Bunbury v. Bunbury*, 1 Bea. 318.

Restraining  
proceedings  
abroad.

But after an action had been brought in the High Court for the administration of the trusts of the will of a British subject, entitled to real and personal estate both here and in Holland, proceedings commenced in Holland for administration were restrained by V.-C. Stuart as to the personal estate; and Knight Bruce, L. J., thought the order

ought to have given the plaintiff abroad liberty to proceed if she could do so without administering the personal estate there ; but the decree was affirmed, *Turner, L. J.*, holding that the proposed variation should not be made, as no evidence was given that the real estate could be administered alone in Holland, and doubting whether even the proceedings as to the real estate ought not also to be restrained : *Hope v. Carnegie*, 1 Ch. 320.

Injunction  
upon terms.

An order for an injunction to restrain proceedings abroad may, in a proper case, be obtained, upon an undertaking to submit to and carry into effect any order which the Court might make : *Bunbury v. Bunbury*, 1 Bea. 318, 330.

Service out  
of jurisdic-  
tion.

Though the High Court has power to order service out of the jurisdiction (Order XI. ; see *Morgan & Chute*, pp. 458 *et seq.* ; and *Peel's Action* in the Chancery Division, pp. 7—9), such power does not extend the jurisdiction of the Court : *Cookney v. Anderson*, 31 Bea. 452 ; followed in *Blake v. Blake*, 18 W. R. 944 ; *Matthaei v. Galitzin*, 18 Eq. 349.

Foreign  
charity.

The Attorney-General has jurisdiction to institute proceedings to secure a legacy given on trusts for a charity by a subject of the Crown, whether in or out of this country, but not to see a foreign charity administered. Unless the testator has so directed, the Court itself cannot administer it ; but it will direct the money to be paid in such manner as will secure the charity being carried into effect, having regard to the law of the foreign country on the subject : *Attorney-General v. Sturge*, 19 Bea. 597 ; but see *New v. Bonaker*, 4 Eq. 655.

For this purpose the Court usually pays it to the person chosen by the testator to effect his charitable intention : *Provost, &c., of Edinburgh v. Aubery*, Amb. 236 ; *Attorney-General v. Lepine*, 2 Swans. 181 ; *Emery v. Hill*, 1 Russ. 112 ; *Attorney-General v. Sturge*, *supra*.

## CHAPTER XXXIV.

### OF THE TRUST FOR A MARRIED WOMAN'S SEPARATE USE—RESTRAINT FROM ANTICIPATION.

#### I. *Of the Separate Use.*

THE usual mode of creating a trust for the separate use of a married woman is, by vesting the property in trustees upon a trust for that purpose, indicated by words expressing that the nature of the interest intended to be given is to be such as shall be protected from the debts and claims of the husband. But as the Court does not allow a trust to fail for the want of a trustee, if the intention to create a separate use is clearly expressed, but the property is given without vesting it in trustees, the husband himself is converted into a trustee so far as his legal rights as husband interfere with his wife's separate enjoyment: *Bennet v. Davis*, 2 P. W. 316; *Rich v. Cockell*, 9 Ves. 375; *Parker v. Brooke*, *Ib.* 583; *Prichard v. Ames*, T. & R. 222; *Newlands v. Paynter*, 10 Sim. 377; *Tullett v. Armstrong*, 1 Bea. 22; *Archer v. Rorke*, 7 I. Eq. R. 478; *Gardner v. Gardner*, 1 Giff. 126; *Green v. Carlill*, 4 Ch. D. 882; *Ashworth v. Outram*, 5 Ch. D. 923, 941, *per James, L. J.*

Trust for  
separate  
use.

Husband  
trustee  
where no  
other trus-  
tees.

But if while discoverte the wife have sold the property settled to her separate use, and have purchased property not usually held as trust investments, she may be taken to have put an end to the separate property, and the husband she afterwards marries will not be a trustee of the newly-acquired investments for her separate use: *Wright v. Wright*, 2 J. & H. 647; *Spicer v. Dawson*, 5 W. R. 431; *Mayd v. Field*, 3 Ch. D. 587, 594.

In one case it was held that a sufficient protection to Legal

estate outstanding.

the wife was afforded by the legal estate remaining vested in the trustees of a will which had devised the property to a person through whom the wife claimed ; *Davison v. Atkinson*, 5 T. R. 434.

Separate use by disclaimer of husband.

The disclaimer of the husband may in effect establish a separate property in the wife, though the gift to her was not clearly settled to her separate use : *Rycroft v. Christy*, 3 Bea. 238.

Fund given to husband for livelihood of wife.

Where an estate is given to a husband for the use or livelihood of his wife, he may be considered as a trustee for her separate use : *Darley v. Darley*, 3 Atk. 399 ; but see *Austin v. Austin*, 4 Ch. D. 233, and *infra*, p. 256.

Separate use in ante-nuptial contract.

An executory ante-nuptial contract between a husband and wife that her estate shall be held by trustees is binding on the husband, if the property is at the same time vested in trustees : *Tullett v. Armstrong*, 1 Bea. 21 ; but if not so vested in trustees, no separate-estate is created : *Simmons v. Simmons*, 6 Hare, 352.

Gifts by husband.

As to gifts made by the husband to his wife in respect of which, notwithstanding the legal impossibility of transmutation of possession, he himself is voluntarily constituted a trustee for her, see p. 32, *ante*.

Paraphernalia.

For the rights of a wife in paraphernalia, see *Williams, Executors*, pp. 763—766.

Improvement of separate estate by husband.

Expenditure by the husband upon the separate property of his wife enures to the benefit of the separate estate : *Barrack v. McCulloch*, 3 K. & J. 110, 119, 120.

Lien for payments by him.

But he will have a lien on the separate estate for an incumbrance on it paid off by him : *Nelson v. Booth*, 5 W. R. 722.

Gift to husband.

The wife may herself destroy the separate use by a clear gift to her husband ; but, in order to establish such gift, undoubted evidence of her assent to the transfer must appear : *Rich v. Cockell*, 9 Ves. 375 ; *Bartlett v. Gillard*, 3 Russ. 149 ; *Lynn v. Ashton*, 1 R. & My. 190 ; *Gardner v. Gardner*, 1 Giff. 128 ; *Woodward v. Woodward*, 3 D. J. & Sm. 672 ; *Green v. Carlill*, 4 Ch. D. 882.

Assent of wife to

Thus where there is sufficient evidence to show an

intention that the husband shall employ the separate money for his own use, or for the family expenditure, the assent of the wife to such an application puts an end to the trust for her separate use, and the money cannot afterwards be recovered by her or her representatives : *Caton v. Rideout*, 1 Macn. & G. 601; *Gardner v. Gardner*, 1 Giff. 130; *Payne v. Little*, 26 Bea. 1; *Rowley v. Unwin*, 2 K. & J. 138; and see *Howard v. Digby*, 2 Cl. & F. 643.

receipt by  
husband.

But if the wife being paid a separate legacy by cheque merely hand over the cheque, endorsed by her, to her husband for the convenience of procuring the money only, and no evidence of an intended gift is forthcoming, the trust in the husband continues with respect to the amount so obtained by him : *Green v. Carlill*, 4 Ch. D. 882.

Handing  
cheque to  
husband.

Circumstances may also be proved to show a contract between the husband and wife, by which a sum of money, part of her separate estate, is handed to him by way of loan, entitling her to prove against his estate in an administration suit for the amount : *Slanning v. Style*, 3 P. W. 334; *Woodward v. Woodward*, 3 D. J. & Sm. 672; and see *Parker v. Brooke*, 9 Ves. 583; *Ashworth v. Outram*, 5 Ch. D. 923.

Loan to  
husband.

And if the husband purchase land with separate property without the wife's consent, and no gift is made out, and he afterwards devises the land, the devisee will hold it in trust for the wife : *Darkin v. Darkin*, 17 Bea. 578; and see *Scales v. Baker*, 28 Bea. 91.

Devise by  
husband of  
land bought  
with  
separate  
estate.

The wife may be bound by acquiescence in dealings by her husband with her separate estate : *Parker v. Brooke*, *supra*; unless he have acknowledged in writing that the property has been received by him in trust for her separate use; *Darkin v. Darkin*, *supra*; or unless she is from lunacy unable to consent, in which case the husband is permitted to retain so much only as he has applied for her maintenance : *Attorney-General v. Parnther*, 3 B. C. C. 441; *Howard v. Digby*, 2 Cl. & F. 634; and see *Edwards v. Abrey*, 2 Ph. 37; *Re Baker*, 13 Eq. 168.

Acquies-  
cence to  
husband's  
dealings.

Under the Married Women's Property Act, 1870, it is Married

Women's  
Property  
Act, 1870.

enacted that wages or earnings, legacies or shares, as next of kin under £200, and unsettled real estate shall belong to a married woman to her separate use : 33 & 34 Vict., c. 93, ss. 1, 7, & 8.

This Act applies to the time of payment of the legacy : *Howard v. Bank of England*, 19 Eq. 295.

As to the wife's liability for her debts contracted before marriage, see s. 12 of the above Act, and 37 & 38 Vict., c. 50 ; *Sanger v. Sanger*, 11 Eq. 470 ; *London and Provincial Bank v. Bogle*, 7 Ch. D. 773.

Separate  
trade.

If a married woman, either with the business that she had before the marriage, or a business which she has established after the marriage, with the consent of her husband, is allowed by her husband to carry on that business for her own benefit, separately from and independently of him, which the Married Women's Property Act, 1870, allows to be done, making the carrying on separately and distinctly a separate use for her, then the trade itself, with everything that is incident to and connected with the trade, becomes part of the separate trade, and the husband is, if and so far as is necessary, a trustee of everything which was devoted to that trade of which he had allowed the wife to be the separate owner : *per James, L. J.*, in *Ashworth v. Outram*, 5 Ch. D. 941.

Separate  
use during  
specified  
marriage.

If the separate use is in express terms limited to a particular marriage, it will not be extended to a second marriage : *Moore v. Morris*, 4 Drew. 33.

Recurrence  
on sub-  
sequent  
marriage.

But, in the usual case of a limitation to separate use for life, with or without a restraint on anticipation, the property will be subject to such limitation upon every succeeding coverture : *Tullett v. Armstrong*, 4 M. & Cr. 405 ; *Re Gaffee*, 1 Macn. & G. 547 (overruling *Knight v. Knight*, 6 Sim. 121 ; *Benson v. Benson*, *Ibid.* 126 ; and *Bradley v. Hughes*, 8 Sim. 149) ; *Hawkes v. Hubback*, 11 Eq. 7.

Power  
while dis-  
covert.

Whilst the woman is discoverte, the separate estate, whether modified by restraint or not, is suspended and



has no operation, but it is capable of arising upon the happening of a marriage: *Tullett v. Armstrong*, 1 Bea. 1, 4 M. & Cr. 405; *Hawkes v. Hubback*, 11 Eq. 5.

While she is discoverte the trustees must convey as she desires: *Buttanshaw v. Martin*, Johns. 89.

If the woman is an infant at the time of her marriage she cannot consent to the extinction of the separate use which her marriage will entitle her to retain: *Johnson v. Johnson*, 1 Keen, 648; see as to consents by infants, *Re Cardross*, 7 Ch. D. 728.

Where married woman an infant.

On the death of the married woman the separate use ceases; and so far as she has not disposed of the property under a power, or otherwise, her husband's title, acquired as her administrator, is good as against her next of kin: *Proudley v. Fielder*, 2 M. & K. 57; *Molony v. Kennedy*, 10 Sim. 254; *Drury v. Scott*, 4 Y. & C. 264; *Musters v. Wright*, 2 De G. & Sm. 777.

Rights of husband on death of wife.

But if the settlement contains a further trust on her death as to moneys unapplied by her, that trust will override her husband's right to any arrears of income in the hands of the trustees: *Johnstone v. Lumb*, 15 Sim. 308.

Where unapplied separate estate is given over.

And the same is the case where there is a trust for the next of kin of savings of the separate income: *Re Rosenthal*, 6 W. R. 139; and see *Askew v. Rooth*, 17 Eq. 426.

Gift over to next of kin.

A wife, who has a power of appointment over her separate property, may dispose not only of the capital, but of the income also as against her husband's right as administrator: *Gore v. Knight*, 2 Vern. 535.

Power of appointment of corpus.

And money secreted in her husband's house, if proved to be part of the separate estate, will also pass under the appointment: *Ibid.*

Money passes.

Creditors have, on the decease of a wife, the same rights against the separate estate as against other property: *Field v. Sowle*, 4 Russ. 112; *Johnson v. Gallagher*, 3 D. F. & J. 520; and see *infra*, p. 264.

Rights of creditors on death of wife.

The separate estate in earnings, protected by the

Earnings

are equitable assets. Married Women's Property Act, 1870, becomes, on her death, equitable assets and divisible among her creditors *pari passu*, so that her executor has no right to retain in full his own debt out of such estate: *Thompson v. Bennett*, 6 Ch. D. 739.

Funeral expenses. As to the liability of the separate estate for funeral expenses, see *Gregory v. Lockyer*, 6 Madd. 90; *Willeter v. Dobie*, 2 K. & J. 647.

Absolute gift of corpus to separate use. Though it was held in *Taylor v. Meads* (4 D. J. & Sm. 597) that the corpus of real estate could be settled to the separate use of a married woman, yet if the words constituting the separate use are such as are inapplicable to the corpus, such as a separate use of the rents and income, together with a restraint on anticipation, then the separate use will not be extended to the corpus, though the corpus be afterwards given to the same person absolutely: *Troutbeck v. Boughey*, 2 Eq. 534.

An absolute gift is constituted by a bequest of income, with a power of dominion or appointment over the corpus, though words importing a separate use may be added: *Elton v. Sheppard*, 1 B. C. C. 532; *Humphrey v. Humphrey*, 1 Sim. N. S. 536; *Haig v. Swiney*, 1 S. & S. 487; and see *Watkins v. Weston*, 3 D. J. & Sm. 434.

But the payment of such a bequest cannot be obtained in an action by the husband and wife; and the Court will give effect to the separate use by directing the fund to be vested in a trustee for the separate use of the wife, upon the terms of the gift in the will: *Simons v. Horwood*, 1 Keen, 7.

Savings. Accretions of separate property purchased with separate property, or savings, are separate estate: *Duncan v. Cashin*, L. R. 10 C. P. 554; *Newlands v. Paynter*, 4 M. & Cr. 408; and see *Steward v. Blakeway*, 4 Ch. 603.

Land bought with savings. So, land bought in the joint names of the husband and wife, with savings from separate estate, will belong to the wife: *Darkin v. Darkin*, 17 Bea. 578; *Scales v. Baker*, 28 Bea. 91.

Savings in the bank. Savings of separate estate in a banker's hands do not

pass under an appointment by will by a *feme covert* of "all funds and property which shall be purchased out of the savings of property to which I have been, or shall be entitled, to my separate use:" *Askew v. Rooth*, 17 Eq. 426.

It is necessary to distinguish from savings of separate estate money obtained out of the husband's business and kept by the wife, and money given to her for household purposes, or for dress or the like, and applied by her in making investments in her name; for such sums and investments would belong to her husband: *Barrack v. McCulloch*, 3 K. & J. 114.

Savings of money given by husband.

Remittances to a wife living apart, for her maintenance, and savings from them cannot be recovered by the husband: *Brooke v. Brooke*, 25 Bea. 342.

Savings by wife living apart.

Arrears of separate estate under a settlement made on a former marriage are separate property of the woman on a subsequent marriage: *Ashton v. McDougall*, 5 Bea. 56; but as soon as they have been paid by the trustees to the wife, they become her property, and the husband is entitled, especially where they are invested in a form inconsistent with the original trust: *Spicer v. Dawson*, 5 W. R. 431; *Mayd v. Field*, 3 Ch. D. 587; see *ante*, p. 247.

Arrears.

### *Words which constitute a Separate Use.*

No particular form of words is necessary in order to vest property in a married woman to her separate use. The intention, although not expressed in terms, may be inferred from the nature of the provisoes annexed to the gift; as where, for example, the direction is that the property shall be at the wife's disposal, or that her receipt shall be a good discharge; circumstances which raise a manifest implication that the marital right is to be excluded: *Stanton v. Hall*, 2 R. & My. 175, 180; *Tyler v. Lake*, 2 R. & My. 183; *Massy v. Rowen*, L. R. 4 H. L. 288.

Intention to exclude husband must appear.

The word "sole" has not *per se* any technical meaning. "Sole use."

ing importing "separate" use, but the whole instrument must be looked at to come to a conclusion upon its meaning: *Gilbert v. Lewis*, 1 D. J. & Sm. 38; *Lewis v. Mathews*, 2 Eq. 177; *Massy v. Rowen*, L. R. 4 H. L. 288; *Farrow v. Smith*, W. N. 1877, 21.

In a marriage settlement.

Unless there is something in the instrument to attribute to the use of the word "sole" the intention to exclude the husband, as, perhaps, in the case of a settlement in contemplation of marriage, the word will be taken to point only to the isolation of the donee from the rest of the world, and as giving her the property as its sole and undisputed owner: *Massy v. Rowen*, L. R. 4 H. L. 298.

In a will.

And where a testator clearly contemplates the legatee's marriage, the word "sole" may be construed to mean "separate": *Re Tarsey*, 1 Eq. 561.

There is no case of a will containing a disposition to a woman, single or becoming discoverte immediately on the death of the testator, in which the simple words "for her sole use and benefit," unconnected with a gift to trustees, have been made the foundation of a decision that the devisee takes a separate estate: *Gilbert v. Lewis*, 1 D. J. & Sm. 48, per Lord Westbury; but see *Lindsell v. Thacker*, 12 Sim. 178, and *Green v. Britten*, 1 D. J. & Sm. 649, where, however, as pointed out by Lord Hatherley in *Massy v. Rowen*, L. R. 4 H. L. 296, the whole purpose of the will clearly indicated a separation of the interest of the wife from the control and influence of the husband. Where the gift has been to trustees for the "sole" use and benefit of an unmarried woman, it has been held to amount to a separate use: *Adamson v. Armitage*, 19 Ves. 416, G. Coop. 283; and see *Exp. Killick*, 3 M. D. & D. 480; and the comments on these cases in *Massy v. Rowen*, L. R. 4 H. L. 296. As to the case of *Cox v. Lyne*, Younge, 562, to a similar effect, see per Lord Westbury in *Gilbert v. Lewis*, 1 D. J. & Sm. 48.

That the word "sole" may mean "separate" use in a marriage settlement is shown by the case of *Exp. Ray*,

1 Madd. 199 ; but see *Beales v. Spencer*, 2 Y. & C. C. C. 651.

But a devise and bequest to a woman, her heirs, executors, administrators, and assigns, "for her and *their* own sole and absolute use for ever," does not confer a separate estate on her, as it could not extend to her heirs, &c., and could only mean that she was to have an absolute interest : *Lewis v. Mathews*, 2 Eq. 177 ; and see *Pearse v. Pearse*, W. N. 1877, 120.

Words superadded to gifts merely for the "use and benefit" of the legatee, may necessarily import an intention that a separate estate should enure to her ; and thus a gift for her own use "independently of her husband" (*Wagstaff v. Smith*, 9 Ves. 520 ; *Dawson v. Bourne*, 16 Bea. 29), or of "any future husband" (*Glover v. Hall*, 16 Sim. 568), or of any other person (*Margetts v. Barringer*, 7 Sim. 482), will have that effect. So also will the addition of a direction that she is to "receive the rents from the tenants herself while she lives, whether married or single" : *Goulden v. Camm*, 1 D. F. & J. 146, in which it was also held that the presence or absence of a previous devise to trustees in such a case made no difference.

Husband excluded.

"Any other person" excluded.

"receipt of rents."

And a gift "for her whole and sole use during her natural life, and free from the control of her present or any future husband, and not to be sold or mortgaged," was construed as a separate use without power of anticipation : *Steedman v. Poole*, 11 Jur. 449 ; and see *Edwards v. Jones*, 14 W. R. 815.

Control.

But a gift to an unmarried woman "for and under her sole control" without any reference to the exclusion of any husband, creates no separate use : *Massey v. Parker*, 2 M. & K. 174.

A gift "only" for her, her executors, administrators, and assigns, is not for the separate use : *Spirett v. Willows*, 3 D. J. & Sm. 293.

"Only."

But, in the peculiar circumstances of a bequest, in case a husband and wife should not be living together at the testator's death, to the wife "absolutely," this word was

"Absolutely."

held to mean a separate use: *Shewell v. Dwarries*, Johns. 172.

“Disposal.”

Words giving the “disposal” of the property to the legatee will confer a separate estate: *Petts v. Lee*, 4 Vin. Abr. 131, pl. 8; *Kirk v. Paulin*, 7 Vin. Abr. 95, pl. 43; *Exp. Ray*, 1 Madd. 199; *Atcherley v. Vernon*, 10 Mod. 518; *Prichard v. Arnes*, T. & R. 222; but see *Re Graham*, 20 W. R. 289.

“Separate receipt.”

A direction that her receipt, or her sole and separate receipt, shall be a proper discharge will give her a separate estate: *Hulme v. Tenant*, 1 B. C. C. 16; *Lee v. Prieaux*, 3 B. C. C. 381; *Stanton v. Hall*, 2 R. & My. 180, per Lord Brougham; *Cooper v. Wells*, 11 Jur. N. S. 923; *Re Molyneux*, 1 R. 6 Eq. 411.

“Proper hands.”

Payment into “her proper hands” is not alone sufficient to establish a separate use: *Tyler v. Lake*, 2 R. & My. 183 (overruling *Hartley v. Hurle*, 5 Ves. 545); *Blacklow v. Laws*, 2 Hare, 40, 52.

“Paid” or “delivered.”

A direction, however, that the property shall be “paid to her for her own use,” or “delivered up to her whenever she shall demand or require,” has been held to confer a separate estate: *Jacobs v. Amyatt*, 1 Madd. 376, n.; *Dixon v. Olmius*, 2 Cox, 414.

“Enjoy.”

In a provision “that she shall enjoy and receive the issues and profits of one moiety of the estate,” the word “enjoy” was held to be very strong to imply a separate use: *Tyrrell v. Hope*, 2 Atk. 561.

“Support and maintenance.”

The words “maintenance and support” are not usually sufficient to create a separate use: *Austin v. Austin*, 4 Ch. D. 233; cf. *Cape v. Cape*, 2 Y. & C. Ex. 543.

But a discretion to pay income for “maintenance and support” gives power to the trustees to pay to the *feme covert* for her separate use: *Austin v. Austin*, *supra*.

Second gift in will by different words.

Where a testator first makes a bequest upon trust for the separate use in so many words, and afterwards makes a gift without trustees either to the same or to another person in words not usually, though sometimes held to be, applicable to the creation of a separate estate, the latter

gift will not be to the separate use: *Wills v. Sayers*, 4 Madd. 409; *Kensington v. Dollond*, 2 M. & K. 184; *Darcy v. Croft*, 9 I. Ch. R. 19.

A provision that a separate use in legacies to females shall extend to such as "are married" has been held to include such as were afterwards married at the time when the legacies became payable: *Re Bayliss*, 17 Sim. 178.

Separate use to married daughters.

On a gift by will to the testator's daughters, "the share or shares of such daughters to be for their sole and separate use," followed by a contingent gift over to the survivors, the separate use was held to attach to the accrued as well as to the original shares: *Re Jarman*, 1 Eq. 71.

### *Power of Disposition.*

A *feme covert*, not restrained from anticipation, acting with respect to her separate estate, whether real or personal, in possession or reversion, is competent to act in all respects as if she were a *feme sole*, and without the concurrence of her husband: *Peacock v. Monk*, 2 Ves. Sen. 190; *Hulme v. Tenant*, 1 B. C. C. 16; *Fettiplace v. Gorges*, 3 B. C. C. 8; *Murray v. Barlee*, 3 M. & K. 209; *Vaughan v. Vanderstegen*, 2 Drew. 183; *Johnson v. Gallagher*, 3 D. F. & J. 515; *Taylor v. Meads*, 4 D. J. & Sm. 597; *London Chartered Bank of Australia v. Lemprière*, L. R. 4 P. C. 572; *Warne v. Routledge*, 18 Eq. 497; *Willcock v. Noble*, L. R. 7 H. L. 580; Sugd. Pow. 173; and see under Divorce Act 20 & 21 Vict. c. 85, ss. 21, 25, and 26.

Power conferred by separate use to act as *feme sole*.

She has, "as incident to her separate estate, and without any express power, a complete right of alienation by instrument *inter vivos* or by will:" *Taylor v. Meads*, *supra*.

Alienation by deed or will.

"The true theory of her alienation is, that any instrument, be it deed or writing, when signed by her, operates as a direction to the trustees to convey or hold the estate according to the new trust which is created by such direc-

Principle stated.

tion. This is sufficient to convey the *feme covert's* equitable interest. When the trust thus created is clothed by the trustees with the legal estate, the alienation is complete both at law and in equity: " *Taylor v. Meads*, 4 D. J. & Sm. 597; *Pride v. Bubb*, 7 Ch. 64.

Disposition of equitable estate.

So a disposition of an equitable fee, part of the separate estate, may be made by the *feme covert* as well as of any other property: *Pride v. Bubb*, 7 Ch. 64; *Bishop v. Wall*, 3 Ch. D. 194.

Consent of trustees unnecessary.

No consent by the trustees is required to enable the wife to bind her separate estate: *Pybus v. Smith*, 1 Ves. Jun. 193; *Parkes v. White*, 11 Ves. 223; *Essex v. Atkins*, 14 Ves. 542; *Taylor v. Meads*, 4 D. J. & Sm. 597. *Whistler v. Newman*, 4 Ves. 129, and *Mores v. Huish*, 5 Ves. 692, *contra*, are not law.

Barring equitable estate tail.

A *feme covert* equitable tenant in tail to her separate use, and restrained from anticipation, is not prevented from enlarging her estate by barring the estate tail, and in conjunction with her husband resettling the property on herself to her separate use in fee: *Cooper v. Macdonald*, 7 Ch. D. 288, 294, 300.

Where *feme covert* protector.

A married woman is, by virtue of a prior estate, settled to her separate use, the protector of the settlement, and may join in a disentailing deed without her husband: Fines and Recoveries Act (3 & 4 Vict., c. 71, s. 24); *secus*, if there be no separate use: *Ibid*.

And the fact that the settlement was before the Act makes no difference: *Keer v. Brown*, Johns. 138.

Acknowledgment unnecessary.

She need not acknowledge her deed relating to her separate estate, either under the Fines and Recoveries Act (*supra*) as to land, or under Malins' Act (20 & 21 Vict. c. 57) as to her reversionary property: *Taylor v. Meads*, 4 D. J. & Sm. 597, 604; *Newcomen v. Hassard*, 4 Ir. Ch. R. 268; *Pride v. Bubb*, 7 Ch. 64, 69.

Alienation of reversion.

That her reversionary separate property may be disposed of by her, see *Sturgis v. Corp*, 13 Ves. 190; *Major v. Lansley*, 2 R. & M. 355; *Donne v. Hart*, 2 R. & M. 360.



As to a disposition of separate estate taking effect on an event which has not yet happened, such as the bankruptcy of the husband, see *Mara v. Manning*, 2 J. & L. 311; *Luther v. Bianconi*, 10 I. Ch. R. 194; *Bestall v. Bunbury*, 13 I. Ch. R. 318; *Keays v. Lane*, I. R. 3 Eq. 1; *Re Smallman*, I. R. 8 Eq. 249.

Contin-  
gent dis-  
positions.

A married woman may, without the consent of her husband, make a valid will of property settled to her separate use: *Taylor v. Meads*, 4 D. J. & Sm. 597; but no will not executed with the consent of her husband, or re-executed after his death, will affect property not so settled: for the new Wills Act (1 Vict., c. 26) does not extend her rights in this respect beyond what is provided by the old Statute of Wills (34 & 35 Hen. 8, c. 5): *Willock v. Noble*, L. R. 7 H. L. 580.

Her power  
to make a  
will.

A *feme covert* having a limited power of appointment by will over personal estate must make her will by reference to the power, and the fact that the will may operate upon some property settled to her separate use will not aid the execution as to other property subject to the power: *Lovell v. Knight*, 3 Sim. 275; *Evans v. Evans*, 23 Bea. 1; and see *Shelford v. Acland*, 23 Bea. 13.

Will under  
power.

It will depend upon the words of the gift to the separate use whether the power of disposition by will extends to the corpus of the property so given: *Troutbeck v. Boughey*, 2 Eq. 534; see *ante*, p. 252.

Extent of  
power to  
will.

As to whether assignees or purchasers of separate estate, with or without notice, are liable to the same rules as would affect other purchasers with notice, see *Dawson v. Prince*, 2 D. & J. 41; *Warne v. Routledge*, 18 Eq. 497; and see *Foss v. Foss*, 15 I. Ch. R. 215.

Purchaser  
without  
notice.

### *Liability for General Engagements.*

The separate estate is liable to general engagements of the married woman, except so far as the Statute of Frauds may interfere where the separate property is real estate; but in order to bind it, it should appear that the engage-

How  
separate  
estate  
bound by  
general  
engage-  
ments.

ment was made with reference to, and upon the faith or credit of that estate : which facts are to be judged of by the Court upon all the circumstances of the case : *Johnson v. Gallagher*, 3 D. F. & J. 513 ; *London Chartered Bank v. Lemprière*, L. R. 4 P. C. 572 ; *Picard v. Hine*, 5 Ch. 274.

Living  
apart.

Amongst the circumstances which may have weight in determining the question, is the fact of the married woman living with, or separate from, her husband : *Johnson v. Gallagher*, *supra* ; *Picard v. Hine*, *supra* ; *McHenry v. Davies*, 10 Eq. 88, 90.

Where  
obligation  
can be  
satisfied  
only by  
separate  
estate ;

Where the married woman enters into an engagement, such as a bond, bill, note, or other obligation, which, considering her state as a married woman, could only be satisfied by means of her separate estate, the inference is conclusive that there was a clear intention on her part that the separate estate should be bound : *Tullett v. Armstrong*, 4 Bea. 319 ; *Johnson v. Gallagher*, 3 D. F. & J. 515.

though  
ignorant of  
her in-  
terest.

And where, having separate estate, she does not know perfectly the nature of her interest, she executes an instrument by which she plainly shows an intention to bind the interest which belongs to her, then, though she may make a mistake as to the extent of the estate vested in her, the law will say that such estate as she may have shall be bound by her own act : *Ibid.*

Where  
*feme* has  
only life  
estate and  
a power.

Where the married woman has a limited interest only, as for instance, a life estate with a power of appointment, the corpus is subject to her debts and engagements where the power is by deed, or writing, or will : *Johnson v. Gallagher*, 3 D. F. & J. 513 ; but it seems doubtful whether the same is the case where the power is to appoint by will only, though the power has been exercised, the cases of *Norton v. Turvill*, 2 P. W. 144, and *Hughes v. Wells*, 9 Hare, 749, being in favour of the opinion that the corpus is chargeable, the case of *Heatley v. Thomas*, 15 Ves. 596, leaving it doubtful, and *Vaughan v. Vanderstegen*, 2 Drew. 165, and *Hobday v. Peters*,

28 Bea. 354, deciding the point distinctly in the negative. In *Johnson v. Gallagher*, *supra*, L. J. Turner treated the point as being still open.

Where there is a limitation in default of appointment, not being a limitation to the executors and administrators of the married woman herself (as in *London Chartered Bank v. Lemprière*, L. R. 4 P. C. 572), the corpus is not chargeable in favour of creditors as against those entitled in default of appointment: *Nail v. Punter*, 5 Sim. 555; *Johnson v. Gallagher*, *supra*.

Where gift over in default of appointment.

Jewels being assigned to trustees upon trust for such person as a *feme covert*, should by writing direct or appoint and in default upon trust for her for life for her separate use, and to be at her absolute disposal, and her receipt, and that of the person to whom she should direct the jewels to be delivered, to be a joint discharge, the gift and manual delivery of the jewels to another was held to be good without any writing, as the direction as to appointment in writing did not extend to the life interest, and the separate use created an absolute gift: *Farington v. Parker*, 4 Eq. 116.

Disposition of settled jewels.

Upon the principles above stated the separate estate is liable on a bond given by her: *Lillia v. Airey*, 1 Ves. Jun. 277; *Norton v. Turvill*, 2 P. W. 144; *Peacock v. Monk*, 2 Ves. Sen. 193; *Heatley v. Thomas*, 15 Ves. 596, explained in *London Chartered Bank v. Lemprière*, L. R. 4 P. C. 595; though her husband or another be joined in it with her: *Hulme v. Tenant*, 1 B. C. C. 16; *Heatley v. Thomas*, 15 Ves. 596; *Davies v. Jenkins*, 6 Ch. D. 728; but whether she is not, in a case where she joins her husband in a security, merely a surety for him, see *Stamford Bank v. Ball*, 4 D. F. & J. 310.

Bond.

Husband joining.

Wife joining as surety.

Her separate estate has been made liable on a covenant to pay a sum of money to the trustees of her daughter's settlement: *Mayd v. Field*, 3 Ch. D. 587.

Covenant.

It is liable on a bill of exchange accepted or endorsed by her: *Stuart v. Kirkwall*, 3 Madd. 387; *Owen v. Homan*, 4 H. L. C. 997; *McHenry v. Davies*, 10 Eq. 88;

Bill of exchange.

*Lancashire & Yorkshire Bank v. Tee*, W. N., 1875, 213.

Promissory note. And on her promissory note: *Bullpin v. Clarke*, 17 Ves. 365; *Field v. Soule*, 4 Russ. 112; *Davies v. Jenkins*, 6 Ch. D. 728; but see *Re Sykes*, 2 J. & H. 415. *Shattock v. Shattock*, 2 Eq. 182, *contra*, is overruled by *London Chartered Bank v. Lemprière*, L. R. 4 P. C. 594.

Agreement for lease. The separate estate may be bound by an agreement to take a lease for a term: *Gaston v. Frankum*, 2 De G. & Sm. 561, in which case the woman was living apart from her husband.

Contract for sale. She may bind her separate estate to pay purchase-money under a contract: *Picard v. Hine*, 5 Ch. 274.

Indemnity to trustees for calls. Or to indemnify trustees for calls on shares: *Re Matthewman*, 3 Eq. 781; and see *Butler v. Cumpston*, 7 Eq. 16.

Guarantee. Or by a guarantee to a person undertaking to supply goods to her husband: *Morrell v. Cowan*, 7 Ch. D. 151.

Retainer of solicitor, builder, &c. It seems that a married woman with separate property may employ a solicitor, builder or tradesman, or hire labourers or servants, and render that property liable for such employment or hiring: *London Chartered Bank v. Lemprière*, L. R. 4 P. C. 594.

Costs. The separate estate is liable for costs to a solicitor retained by the *feme coverte* in proceedings and matters strictly referring to that estate: *Murray v. Barlee*, 3 M. & K. 210; *Re Pugh*, 17 Bea. 336; but see *Callow v. Howle*, 1 De G. & Sm. 531; *M. v. C.*, L. R. 2 P. & D. 414, 419.

And if the husband is joined with the wife in an action to deprive her of her separate estate, which action fails, she may still have her costs; or rather her solicitor will be entitled to them, instead of a charge against her separate property: *Kevan v. Crawford*, 6 Ch. D. 29, 40; see *Morgan & Davey on Costs*, p. 262.

Where debt is husband's. If it appears that the engagement is not the wife's, but her husband's, her separate estate will not be liable for it;

as where it was by recital charged on her property, but the security was given by the husband alone: *Tullett v. Armstrong*, 1 Bea. 1.

And if the debt be the husband's, and she effectually join in charging her separate estate to secure it, she is entitled to insist that his property be first applied in paying it: *Aguilar v. Aguilar*, 5 Madd. 414; and see *Stamford Bank v. Ball*, 4 D. F. & J. 310.

Subject to the enactments next referred to, the separate estate is not liable to contribute towards the family expenses, however poor the husband may be: *Lumb v. Milnes*, 5 Ves. 520; *Hodgens v. Hodgens*, 4 C. & F. 323.

Family  
expendi-  
ture.

But if the husband is chargeable to the parish, the separate property may be made liable for his maintenance: Married Women's Property Act, 1870, (33 & 34 Vict., c. 23,) s. 13.

Support of  
husband;

And a married woman having separate property is subject to all such liability for the maintenance of her children as a widow is subject to, though without relieving the husband from his liability: *Ibid.* s. 14.

of chil-  
dren.

The property of a widow which has been to her separate use during the coverture, is liable to fulfil contracts made with respect to it during her husband's lifetime: *Stead v. Nelson*, 2 Bea. 245.

Liability  
after  
husband's  
death.

As to the liability of a husband for his wife's debts contracted before the marriage, see *Chubb v. Stretch*, 9 Eq. 559, and 37 & 38 Vict., c. 50.

Liability of  
husband  
for ante-  
nuptial  
debts.

### *Proceedings with regard to the Separate Estate.*

The separate estate can be reached to satisfy general engagements only by an action instituted against the married woman and her trustees, for neither at law nor in equity can a married woman be personally bound by contract: *Murray v. Barlee*, 3 M. & K. 222; *Aylett v. Ashton*, 1 M. & Cr. 105; *Vaughan v. Vanderstegen*, 2 Drew. 184; *Johnson v. Gallagher*, 3 D. F. & J. 494, 519;

No action  
against  
*feme covert*  
personally.

*MacHenry v. Davies*, 6 Eq. 462; and see *Wainford v. Heyl*, 20 Eq. 324. But see as to the necessity of joining the trustees: *Davies v. Jenkins*, 6 Ch. D. 728.

Where husband constructive trustee.

But if the trustees pay funds, part of separate property, to the husband, he becomes a trustee for his wife, and suable accordingly: *Rich v. Cockell*, 9 Ves. 375, see *ante*, p. 247.

Injunction.

An injunction may be obtained to restrain the husband, or other persons, from receiving or using separate estate: *Green v. Green*, 5 Ha. 400 n.; *Mawhood v. Milbanke*, 15 Bea. 36

Form of decree to charge separate estate.

The decree charging the separate estate will affect only that property which the married woman has at the date of it, and the form now adopted is to declare the separate property of the married woman vested at the date of the decree in her, or in any person in trust for her, to be chargeable with the payment of the debt and interest, and that the same be so charged accordingly; to order an account of what is due to the creditor; to inquire of what the separate property consists at the date of the decree, and in whom it is vested: *Picard v. Hine*, 5 Ch. 274; *Lancashire & Yorkshire Bank v. Tee*, W. N., 1875, 213.

This form of decree was also used in a case in which the wife had joined her husband in signing a joint and several promissory note for money lent to him, and for which her separate property was, on his bankruptcy, held to be liable: *Davies v. Jenkins*, 6 Ch. D. 728.

Husband to be defendant to action.

The husband of a married woman must be joined with her as a defendant in an action to charge wages and earnings which are her separate property under the Married Women's Property Act, 1870: *Hancocks v. Lablache*, L. R. 3 C. P. Div. 197.

Recovery of separate estate.

But he should join with his wife as plaintiff in recovering the separate estate where there are no trustees: *Fleet v. Perrins*, L. R. 3 Q. B. 536, 4 *Ibid.* 500; *Jones v. Cuthbertson*, L. R. 7 Q. B. 218, 8 *Ibid.* 504.

Action after death

Rights created by the *feme covert* against her separate estate may be enforced against it after the determination

of the coverture, or after her death : *Field v. Sowle*, 4 Russ. 112 ; *Nail v. Punter*, 4 Sim. 474 ; *Johnson v. Gallagher*, 3 D. F. & J. 494, 520. of husband or of wife.

After separation from her husband the wife, by her next friend, may bring an action to establish the separate use against her husband : *Anderson v. Anderson*, 2 M. & K. 427. After separation.

Whether she can, without her husband, sue in respect of a nuisance or other personal injury, see *White v. Cohen*, 1 Dr. 312. Nuisance.

The husband is not the person to sue a tenant of separate property for trespass, &c. : *Allen v. Walker*, L. R. 5 Exch. 187. Trespass.

A married woman is not liable to be made a bankrupt for a debt contracted before her marriage ; and it is probably not the case, though it has never been decided, that she can be made a bankrupt in respect of her separate estate : *Exp. Holland*, 9 Ch. 307. Whether married woman can be bankrupt.

But where she, being a separate trader under the Married Women's Property Act, 1870, had presented a petition for liquidation, a creditor who prayed for judgment in an action against her to enforce his debt, was directed to prove in the liquidation : *Day v. Freund*, W. N., 1876, 266.

A married woman is not liable for general torts ; they are the torts of her husband ; and her separate estate cannot therefore be made liable for them : *Wainford v. Heyl*, 20 Eq. 321, 324. Not liable for torts.

Where the married woman is entitled to her separate use and is unrestrained from anticipation, she is, to all intents, a *feme sole* ; and the loss occasioned by her breach of trust must be made good out of that part of her property : *Clive v. Carew*, 1 J. & H. 199, 204 ; *Wainford v. Heyl*, 20 Eq. 321, 324. Liability for breach of trust.

But if she is restrained from anticipation, the property so settled cannot be affected by her breach of trust, even though she herself be the settlor : *Clive v. Carew*, 1 J. & H. 199, 207.

Thus arrears of an annuity, to which an executrix was entitled to her separate use without power of anticipation, were held to be applicable to replace misappropriations by her as executrix, such arrears not being subject to the restraint; but future payments, being so subject, were not held to be applicable for that purpose: *Pemberton v. McGill*, 1 Dr. & Sm. 266; *Claydon v. Finch*, 15 Eq. 266.

Acqui-  
escence.

As to the effect of a married woman's acquiescence in a breach of trust, see *post*, p. 334.

Liability  
for fraud.

In no case, and by no device whatever, can the restraint upon anticipation be evaded, though the *feme covert* be guilty of fraud: *Jackson v. Hobhouse*, 2 Mer. 488; *Clive v. Carew*, 1 J. & H. 199, 206; *Arnold v. Woodhams*, 16 Eq. 29; *Stanley v. Stanley*, 7 Ch. D. 589; and see *Re Lush*, 4 Ch. 591.

But a married woman is capable of committing a fraud by representing that she has an *absoluté* disposable interest; and her separate property not subject to a restraint on anticipation, is liable to be visited with the consequences of that fraud: *Vaughan v. Vanderstegen*, 2 Drew. 379; *Hobday v. Peters*, 28 Bea. 354; *Sharpe v. Foy*, 4 Ch. 35; *Wainford v. Heyl*, 20 Eq. 321, 324; *Thomas v. Price*, 46 L. J. Ch. 761.

## II. *Restraint on Anticipation.*

Applies  
to any  
property.

Anticipation is capable of being restrained in the case of any kind of property: *Baggett v. Meux*, 1 Ph. 627.

Suspension  
during dis-  
coverture.

The restraint on anticipation is annexed to the separate estate only, and the separate estate has its existence only during coverture; therefore the restraint is suspended during the period of discovery: *Tullett v. Armstrong*, 1 Bea. 1, 4 M. & Cr. 377; *Scarborough v. Borman*, 1 Bea. 34; 4 M. & Cr. 377; *Clark v. Jaques*, 1 Bea. 36; *Dixon v. Dixon*, 1 Bea. 40; *Moore v. Morris*, 4 Drew. 33; *Re Gaffee*, 1 Macn. & G. 541; *Hawkes v. Hubback*, 11 Eq. 5.

By what  
words  
created.

The restraint on anticipation may be expressed by any words showing clear intention to that effect: *Harrop v. Howard*, 3 Hare, 624; *Brown v. Bamford*, 1 Ph. 620;



*Moore v. Moore*, 1 Coll. 54 ; *Field v. Evans*, 15 Sim. 375 ; *Harnett v. MacDougall*, 8 Bea. 187 ; *Steedman v. Poole*, 6 Hare, 193 ; see *Alexander v. Young*, 6 Hare, 393.

A trust to pay income from time to time does not operate to restrain anticipation : *Parkes v. White*, 11 Ves. 222.

A devise to trustees upon trust for the benefit of a *feme sole*, " the rents and profits of which she shall receive from the tenants herself whether married or single," followed by a proviso that no sale or mortgage of the land or the rents should take place during her life, was construed as a devise to the separate use without power of anticipation, thereby invalidating a mortgage by her and her husband : *Goulden v. Camm*, 1 D. F. & J. 146.†

After a bequest to a tenant for life, a remainder to daughters cannot be limited to their separate use with a restraint on anticipation, and the daughters take without the restriction : *Armitage v. Coates*, 35 Bea. 1 ; *Re Michael*, W. N., 1877, 134.

Where restraint void for remoteness.

So a restraint on anticipation is too remote when imposed upon an appointment under an antenuptial settlement : *Re Cunynghame*, 11 Eq. 324 ; *Re Teague*, 10 Eq. 564.

But under a power given by will to appoint portions, an appointment of a portion with a restraint on anticipation was held to be good : *Dickinson v. Mort*, 8 Hare, 178.

The Court has no power to interfere for the purpose of enabling a married woman to alienate lands devised to separate use with restraint on anticipation, although by another will property of greater value was devised to her upon condition of her so alienating them : *Robinson v. Wheelwright*, 6 D. M. & G. 535.

Alienation not sanctioned by Court against clause.

Though the married woman may be domiciled in a country where the restraint against anticipation is not regarded, yet the Court here will not sanction any arrangement which would get rid of the restraint : *Peillon v. Brooking*, 25 Bea. 218.

It appears that the restraint from anticipation does not

Restraint

does not  
prevent bar  
by delay.

relieve a married woman from the ordinary consequences of lapse of time and acquiescence : *Derbshire v. Home*, 3 D. M. & G. 80.

As to the effect of the clause on her liability for breach of trust and fraud, see *ante*, pp. 265, 266.

Effect of  
restraint as  
to breach  
of trust  
to invest.

The presence or absence of a proviso against anticipation has no bearing upon the question whether trustees are, or are not, liable for a breach of trust by making an improper investment, since the power of the married woman is only over the interest after it has become due, where there is such a proviso, over the interest due or to become due if there be no such proviso : *Davies v. Hodgson*, 25 Bea. 177, 186.

Compro-  
mise.

A married woman is not prevented by the clause against anticipation for compromising a suit affecting the property subject to the clause : *Wilton v. Hill*, 25 L. J. Ch. 156.

Cash in  
Court.

Where cash in Court belongs to a married woman to her separate use, without power of anticipation, it may be paid out to her on her separate receipt : *Re Croughton*, 8 Ch. D. 460.

Stock in  
Court.

But if the fund consist of consols, as property producing income, the Court will not transfer it to her upon such a title : *Re Ellis*, 17 Eq. 409.

Past divi-  
dend.

A past dividend in Court is liable to be paid over to a sequestrator, notwithstanding the separate use and restraint against anticipation : *Claydon v. Finch*, 15 Eq. 266.

Sale  
moneys.

Sale moneys of property sold under the Settled Estates Act remain affected by the separate use and restraint from anticipation attached to the land sold : *Re Morgan* 9 Eq. 587.

Payment  
out after  
protection  
order.

As to payment out after a protection order under the Divorce Acts, see *Re Kingsley*, 26 Bea. 84 ; *Re Rainsdon*, 4 Drew. 446 ; *Cooke v. Fuller*, 26 Bea. 99.

## CHAPTER XXXV.

### DOWER AND CURTESY IN EQUITABLE ESTATES.

#### *Dower.*

WHEN a husband shall die beneficially entitled to any land for an interest which shall not entitle his widow to dower out of the same at law, and such interest, whether wholly equitable or partly legal and partly equitable, shall be an estate of inheritance in possession (other than an estate of joint tenancy), then his widow shall be entitled to dower out of the same land : Dower Act (3 & 4 W. 4, c. 105) s. 2.

Dower Act:  
Trust  
estates  
made liable  
to dower.

Dower will attach though the husband, having a right of entry only, should not have recovered possession when he dies : *Ibid.* s. 3.

Right of  
entry.

But no widow is entitled to dower out of any land which has been absolutely disposed of by her husband in his lifetime or by his will : *Ibid.* s. 4 ; or where in the deed by which such land was conveyed to him, or by any deed executed by him, it shall be declared that his widow shall not be entitled to dower out of such land : s. 6.

No dower  
out of  
estates dis-  
posed of.

Before this Act there was no dower out of trust estates : *Burgess v. Wheate*, 1 Ed. 197 ; *Dixon v. Saville*, 1 B. C. C. 326 ; *D'Arcy v. Blake*, 2 Sch. & L. 391 ; see *Roper v. Roper*, 3 Ch. D. 714, 719 ; *Dawson v. Bank of Whitehaven*, 6 Ch. D. 221 ; Macq., Husband and Wife, p. 170 *et seq.*

Before the  
Act.

Or out of an equity of redemption : *Dixon v. Saville*, 1 B. C. C. 326 ; *Casborne v. Scarfe*, 1 Atk. 605 ; see as to cases since the Act, *Jones v. Jones*, 4 K. & J. 361.

Equity of  
redemp-  
tion.

And if the wife concurred in the mortgage, her right to

dower was extinguished, and she had no right to redeem, unless the equity of redemption was limited to her in such a way, as that it appeared that she was to regain what she had lost by her concurrence: *Dawson v. Bank of Whitehaven*, 6 Ch. D. 218; and see *Jackson v. Parker*, Amb. 687; *Jackson v. Innes*, 1 Bligh. 104; 33 Vict. c. 14, s. 2.

**Freebench.** Neither before nor since the Act could a widow claim freebench out of equitable estates: *Forder v. Wade*, 4 B. C. C. 520; *Powdrell v. Jones*, 2 Sm. & G. 407; *Smith v. Adams*, 5 D. M. & G. 712.

**Gavelkind.** But she can claim dower out of gavelkind lands: *Farley v. Bonham*, 2 J. & H. 177.

**Freehold leased for lives.** A widow is not dowable out of freehold leased for lives, unless the lives drop during the marriage: *D'Arcy v. Blake*, 2 Sch. & L. 387; but see *Sheaf v. Cave*, 24 Bea. 259.

**Executory devise over.** An executory devise over upon the husband dying without issue living at his death, after an equitable fee, does not prevent dower from attaching, though the limitation over take effect: *Smith v. Spencer*, 2 Jur. N. S. 778.

**Proceeds of sale.** A widow can now claim her dower out of the proceeds of sale of property mortgaged by her husband after the debt is satisfied: *Jones v. Jones*, 4 K. & J. 361; but see *Dawson v. Bank of Whitehaven*, 6 Ch. D. 218.

She is not dowable out of a trust fund representing the sale moneys of residuary real and personal estate if she takes an annuity out of the same fund: *Lacey v. Hill*, 19 Eq. 346; and see *Rowland v. Outhbertson*, 8 Eq. 466.

As to the mode of barring dower since the Act, see 2 Dav. Prec. Pt. I. 231, 233, 389.

### *Curtesy.*

**In separate estate of wife.**

A husband is entitled to curtesy in the equitable estate of inheritance of his wife, settled to her separate use, if there be issue capable of inheriting it, and she have not made an effectual disposition of it: *Watts v. Ball*, 1 P.

W. 108 ; *Lushington v. Sewell*, 1 Sim. 435 ; *Roberts v. Dixwell*, 1 Atk.607 ; *Morgan v. Morgan*, 5 Madd. 408 ; *Follett v. Tyrer*, 14 Sim. 125 ; *Burgess v. Wheate*, 1 Ed. 196 ; *Appleton v. Rowley*, 8 Eq. 139 ; *Cooper v. Macdonald*, 7 Ch. D. 288, 297.

[*Hearle v. Greenbank*, 3 Atk. 695, and *Moore v. Webster*, 3 Eq. 267, *contra*, are disapproved.]

The husband is entitled, though the property is vested during the life of the wife for her separate use, with a remainder over to her, in default of appointment, in fee : *Morgan v. Morgan*, 5 Madd. 408 ; *Follett v. Tyrer*, 14 Sim. 125. Separate use.

An equitable estate tail in the wife with a restraint against anticipation may be effectually barred in concurrence with her husband, and her subsequent disposal of the fee by will oust the husband's right to curtesy : *Cooper v. Macdonald*, 7 Ch. D. 288. Equitable estate tail.

If the coverture begins after an adverse possession has commenced, and terminates during the continuance of such adverse possession,—or if both the trustee and *cestui que trust* are disseised before the equitable estate of the wife begins, by a party claiming by a title paramount to the trust, and who retains possession till after the death of the wife,—the husband would not acquire any title as tenant by the curtesy : *Parker v. Carter*, 4 Ha. 416. As to the exclusion of the equitable seisin by an adverse possession, see *De Grey v. Richardson*, 3 Atk. 469 ; *Grenville v. Blyth*, 16 Ves. 224 ; *Casburne v. Inglis*, 2 J. & W. 194. Effect of adverse possession.

## CHAPTER XXXVI.

RIGHT OF CESTUI QUE TRUST TO A RECEIVER—PAYMENT  
INTO COURT—ATTACHMENT FOR NON-PAYMENT—IN-  
JUNCTION—TO COMPEL TRUSTEES TO ASSERT LEGAL  
RIGHTS—NE EXEAT—CRIMINAL PROCEEDINGS.

Where property in danger. A RECEIVER will be appointed on an interlocutory application upon evidence that the trust property is in danger of being wasted : *Middleton v. Dodswell*, 13 Ves. 269 ; *Barkley v. Reay*, 2 Hare, 308.

Imminent insolvency of the trustee. The apprehended insolvency of the trustee is good ground for the application : *Ibid.*

Before writ served. And in such a case the Court has appointed a receiver *ex parte* before the service of the writ in an action for administration : *Re H.*, 1 Ch. D. 276.

Bankruptcy of trustee. And actual bankruptcy is always a sufficient reason : *Scott v. Becher*, 4 Price, 346 ; *Bainbrigge v. Blair*, 1 Bea. 495.

Bankruptcy after administration decree. And a receiver may be appointed after an administration decree upon the bankruptcy of the sole trustee and defendant, though the trustee in bankruptcy be not before the Court : *Steele v. Cobham*, 1 Ch. 325.

Settlor's knowledge of insolvency. The fact that a testator must have known of proceedings in bankruptcy having been taken against the trustee appointed by his will does not prevent the application : *Langley v. Hawk*, 5 Madd. 46.

After loss of part of fund lost. Where part of the fund has been lost, that is *prima facie* evidence of a breach of trust sufficient to authorise the interference of the Court by the appointment of a receiver : *Evans v. Coventry*, 5 D. M. & G. 918.

Other breaches of trust. And where a trustee omitted to get in the trust estate and left a considerable part of it on improper securities,

besides failing to raise a sum intended for the maintenance of infants, a receiver was appointed: *Richards v. Perkins*, 3 Y. & C. 299.

So also where, in consequence of a disagreement between the trustees, the tenant for life could not otherwise obtain payment of his income: *Bagot v. Bagot*, 10 L. J. Ch. 123; *Wilson v. Wilson*, 2 Keen, 249.

Disagreement.

It seems that upon refusal to act by all the trustees except one, a receiver may be appointed at the instance of all the beneficiaries: *Brodie v. Barry*, 3 Mer. 695; *Beaumont v. Beaumont*, cited, *Ibid.*; *Tait v. Jenkins*, 1 Y. & C. C. C. 492; *Palmer v. Wright*, 10 Bea. 234, 237.

Refusal of some to act.

And a receiver was appointed where one of three trustees refused to act, and the rest acted alone and advanced trust money on security without their co-trustee: *Swale v. Swale*, 22 Bea. 584.

But the disclaimer, inaction, or absence abroad of one of several trustees is not a ground alone for the appointment of a receiver without the consent of the co-trustees: *Browell v. Reed*, 1 Hare, 434.

Disclaimer, inaction or absence.

But absence of a sole trustee abroad or out of the jurisdiction is sufficient ground: *Noad v. Backhouse*, 2 Y. & C. C. C. 529; *Smith v. Smith*, 10 Ha. App. lxxi.

Trustee abroad.

So also it seems is the case of all the trustees except one being out of the jurisdiction: *Tidd v. Lister*, 5 Madd. 433.

Mere poverty of the trustee is no reason for the appointment: *Howard v. Papera*, 1 Madd. 142; *Anon.*, 12 Ves. 4.

Poverty.

But coupled with charges of bad character, drunken and violent conduct, poverty will be taken into account: *Everett v. Prythergh*, 12 Sim. 367.

Charges of drunkenness, &c.

Where trustees have to manage a business and they are not themselves qualified, they should agree in appointing a manager; if they do not the Court will appoint a receiver and manager: *Hart v. Denham*, W. N., 1871, 2.

Receiver and manager.

A receiver will be appointed at the instance of the re- Tenant for

life not renewing lease. mainderman where a tenant for life is under an obligation to renew leaseholds, and there is danger of his omitting so to do: *Bennett v. Colley*, 2 M. & K. 233; see *ante*, p. 149.

Trustees having inconsistent duties. Where trustees accepted an additional and different trust, the validity of which was disputed, it was held that their duties must clash, and a receiver was appointed: *Talbot v. Scott*, 4 K. & J. 139.

Security. In general receivers must enter into recognisances: *Mead v. Orrery*, 3 Atk. 237.

Waiver of security. Receivers must give security, unless all the *cestuis que trust* are *sui juris* and consent to their acting without: *Carlisle v. Berkley*, Amb. 599; *Ridout v. Plymouth*, 1 Dick. 68; *Manners v. Furze*, 11 Bea. 30; *Tylee v. Tylee*, 17 Bea. 583.

Costs. The ordinary expenses of the receivership are not apportioned between tenant for life and remainderman, but are payable by the tenant for life: *Shore v. Shore*, 4 Drew. 510.

Discharge. The receiver will be discharged when new trustees are appointed by the Court: *Bainbrigge v. Blair*, 3 Bea. 421. But, having been appointed for the benefit of all the *cestuis que trust*, he will not be discharged at the sole instance of the party who procured his appointment: *Ibid.*; and see *Davis v. Marlborough*, 2 Swans. 118.

### *Order for Payment into Court by Trustees upon Admission.*

Motion for payment in by trustees and accounting parties. In actions against trustees the plaintiff is, upon a clear admission by the defendant that he has, or has had, or ought to have had, the trust fund, or assets representing it, in his hands, entitled to move that the admitted fund may be secured in Court: *Nokes v. Seppings*, 2 Ph. 19; *Hagell v. Currie*, 2 Ch. 449.

Directors. Directors are in the position of trustees with reference to this rule: *Hichens v. Congreve*, 1 R. & M. 150, n.; *Hagell v. Currie*, *supra*.

Agents. So also are agents: *Dunne v. English*, 18 Eq. 524,



If the plaintiff is merely contingently entitled he may still move for payment in : *Bartlett v. Bartlett*, 4 Ha. 631; *Marryat v. Marryat*, 23 L. J. Ch. 876; *Governesses' Benevolent Institution v. Rushbridger*, 18 Bea. 467; but see *Ross v. Ross*, 12 Bea. 89.

*Cestui que trust* contingently entitled.

The admission must be clear and distinct (*Freeman v. Fairlie*, 3 Mer. 24; *Hagell v. Currie*, *supra*); and therefore no order will be made where the defendant does not specify in what investments the fund is : *Hinde v. Blake*, 4 Bea. 597.

Admission must be clear.

Investments not specified.

The rule equally applies where the trustee shows, by his admission, that the property having been invested in an unauthorised manner, has been diverted from the trust fund. Thus orders have been made where the money was lent on a promissory-note : *Vigrass v. Binfield*, 3 Madd. 62.

Misapplication of trust fund.

Personal security.

To the trustee's firm : *Roy v. Gibbon*, 4 Ha. 65.

Loan to co-trustee.

To a *cestui que trust* : *Collis v. Collis*, 2 Sim. 365.

To *cestui que trust*.

On an unauthorised security : *Costeker v. Horroæ*, 3 Y. & C. Ex. 530.

On unauthorised security.

On insufficient security, where the power to invest was on "good" security : *Bourne v. Mole*, 8 Bea. 177; see also *Wyatt v. Sharratt*, 3 Bea. 498; *Ingle v. Partridge*, 32 Bea. 661; *Wiglesworth v. Wiglesworth*, 16 Bea. 269; *Nokes v. Seppings*, *supra*.

On insufficient security.

The application is usually made before the trial of the action : *Freeman v. Fairlie*, *supra*; *Peacham v. Daw*, 6 Madd. 98; *Richardson v. Bank of England*, 4 M. & Cr. 165; *Rothwell v. Rothwell*, 2 S. & S. 217; *Mortlock v. Leathes*, 2 Mer. 491. But it may be made at the trial : *Isaacs v. Weatherstone*, 10 Ha. App. xxx.

When motion may be made.

If the admission be contained in an affidavit as to accounts, the order may be made after the trial, and before further consideration : *Binns v. Parr*, 7 Ha. 288; *Dunne v. English*, 18 Eq. 524.

Evidence is not adducible to make out the fact that the fund is in the defendant's hands : *Richardson v. Bank of England*, 4 M. & Cr. 165, 176; *Boschetti v. Power*, 8 Bea. 98,

Evidence inadmissible.

And the fact that the Court may feel satisfied that the defendant has the fund does not alter the case: *Fox v. Mackreth*, 1 Ves. Jun. 69; *Mills v. Hanson*, 8 Ves. 68, 91; *Quarrell v. Beckford*, 14 Ves. 177.

Admission  
of plain-  
tiff's title.

It is also necessary that the defendant should admit a trust in favour of the plaintiff (*Dolder v. Bank of England*, 10 Ves. 352), unless it is clear from the facts that the plaintiff's title will be established at the trial: *Whitmore v. Turquand*, 1 J. & H. 296; *Dubless v. Flint*, 4 M. & Cr. 502; *McHardy v. Hitchcock*, 11 Bea. 75; *Bank of Turkey v. Ottoman Co.*, 2 Eq. 366.

But in a special case the plaintiff was allowed to traverse the defendant's denial of his title: *Domville v. Solly*, 2 Russ. 372.

Plaintiff  
may not  
pick out  
his right  
from  
defendant's  
case.

The plaintiff must rely on his own case, and may not move on the ground that in some other right shown by the defendant the fund ought to be brought in, unless such other right discloses a breach of trust by the defendant: *Proudfoot v. Hume*, 4 Bea. 476; *Wiglesworth v. Wiglesworth*, 16 Bea. 271.

Breach of  
trust must  
be shown.

No order will be made if an alleged misapplication or breach of trust is not made out, as in the case where there is a power to vary, and a reinvestment of the proceeds of a sale is intended, but not yet effected: *Meyer v. Montriou*, 4 Bea. 343; *Futter v. Jackson*, 6 Bea. 424; *Talbot v. Marshfield*, 2 Dr. & Sm. 285.

Notice  
of motion  
to specify  
fund.

The notice of motion must specify the funds required to be paid in: *Nokes v. Seppings*, 2 Ph. 19.

#### *Attachment for Non-payment.*

Exception  
from  
Debtors'  
Act, 1869.

The Debtors' Act, 1869 (32 & 33 Vict. c. 62), s. 4, abolishes imprisonment for debt, but excepts from its operation the case of default by a trustee or person acting in a fiduciary capacity, and ordered to pay into a court of equity any sum in his possession or under his control (sub.-sect. 3).

Attach-

Applications for attachment under this section should

not be made *ex parte*: *Ferguson v. Ferguson*, 10 Ch. 661. As to the present practice in Attachment, see Order XLIV., Morgan & Chute, p. 779; Peel's Practice, 134 *et seq.* ment not ordered *ex parte*.

The Debtors' Act, 1878, gives a discretion to the judge as to attachment.

It seems to be understood that the section extends to an application under 41 Geo. 3, c. 90, to commit for disobedience to a decree of the Court of Chancery in Ireland ordering payment of money by a trustee: *Ferguson v. Ferguson*, *supra*; and see Dan. Ch. Pr. 934.

A creditor who has received money from a bankrupt by way of fraudulent preference, and has been ordered to repay it to the trustee in bankruptcy, is not a person "acting in a fiduciary capacity" within the meaning of the sub-section: *Exp. Hooson*, 8 Ch. 231. Person in fiduciary capacity.

The fact, that the trustee has spent the money which he has been ordered to pay into Court, and his inability to refund it, are not sufficient to protect him from arrest: *Middleton v. Chichester*, 6 Ch. 152. Attachment though money spent.

Nor does the poverty alone of the defaulting trustee give any jurisdiction to release him: *Ransom v. Boyd*, W. N., 1877, 236. Poverty.

The joint and several liability of trustees for misappropriation by their co-trustees extends to the case of a trustee who, though he has never had the management of the funds, is ordered to pay into Court, and he is therefore liable to attachment for non-payment: *Evans v. Bear*, 10 Ch. 77. Liability of non-acting trustee.

If the sum ordered to be paid into Court is one which the trustee has, by his wilful default or neglect, never had in his possession or control, he has never been enriched by it, and is not liable to attachment in respect of it: *Middleton v. Chichester*, 6 Ch. 152, 158; *Ferguson v. Ferguson*, 10 Ch. 661. Wilful default.

Thus, if it appears that part of the amount claimed consists of interest which is unascertained, such interest is Interest.

not a sum which the Court can say was ever in the trustee's possession, and the Court will not direct an attachment in respect of the principal and interest so circumstanced: *Middleton v. Chichester*, 6 Ch. 159.

Bank-  
ruptcy  
Act, 1869,  
s. 12.

By s. 12 of the Bankruptcy Act, 1869 (32 & 33 Vict., c. 71) "where a debtor shall be adjudicated a bankrupt, no creditor to whom the bankrupt is indebted in respect of any debt provable in the bankruptcy, shall have any remedy against the property or person of the bankrupt in respect of such debt, except in manner directed by this Act."

Where  
trustee  
bankrupt.

In consequence of this enactment it is held that a trustee, who has been ordered to pay into Court money which was mixed with his own, and is at the same time adjudicated bankrupt, cannot be retained under arrest, the debt being one "provable in the bankruptcy," although not one which would be released by an order of discharge: *Cobham v. Dalton*, 10 Ch. 655.

But the section does not apply to composition: *Pashler v. Vincent*, 8 Ch. D. 825.

But where the attachment issues before the bankruptcy, the bankrupt trustee cannot use his bankruptcy as a reason for obtaining his discharge: *Lewes v. Barnett*, 6 Ch. D. 252.

### *Of Proceedings to compel Trustees to Assert their Legal Rights.*

Right to  
compel  
trustees  
to assert  
legal title.

If the legal estate in property is in trustees, and they refuse to assert their legal right to it, any beneficiary, however remotely interested, may go to the Court to compel the trustees to assert their legal property: *Foley v. Burnell*, 1 B. C. C. 274, 276; *Lechmere v. Carlisle*, 3 P. W. 215.

Though  
action de-  
ferred at  
instance of  
benefi-  
ciaries.

And though *cestuis que trust* authorised the trustee to allow fund to remain outstanding against the express provisions of the trust, the trustee was held bound to bring an action for it without an indemnity, and, on his

default, to pay the costs of the suit to compel him so to do : *Kirby v. Mash*, 3 Y. & C. 295. Indemnity.

A *cestui que trust*'s right under a voluntary covenant to recover the debt out of the assets of the covenantor, is unaffected by the trustee's refusal to sue on the covenant : *Fletcher v. Fletcher*, 4 Ha. 67. Action on voluntary covenant.

It seems that a *cestui que trust*, though an infant, will be barred, if the trustee do not bring his action within the statutory period : *Hovenden v. Annesley*, 2 Sch. & L. 629 ; *Wych v. East India Co.*, 3 P. W. 309 ; and see further, *post*. *Cestui que trust* barred by delay of trustee.

A *cestui que trust* cannot give authority to a solicitor to institute proceedings in the trustee's name to recover the legal interest, without the concurrence of the trustee : *Crossley v. Crowther*, 9 Hare, 384, 386. Using trustee's name to sue.

As to the frame of allegations to support a claim arising from a refusal by a trustee to sue, see *Jerdein v. Bright*, 2 J. & H. 325. Form of pleading.

### *Injunctions against Trustees.*

An injunction is the proper remedy to restrain a trustee from an act involving a breach of trust intended to be done ; and that though the act may not in its consequences be irremediable : *Attorney-General v. Mayor of Liverpool*, 1 M. & C. 171 ; *Milligan v. Mitchell*, 1 M. & K. 452 ; *Wiles v. Gresham*, 1 Eq. Rep. 348. *Pechel v. Fowler*, 2 Anst. 549, and *Mansfield v. Shaw*, 3 Madd. 100, are not now approved. Where granted.

An injunction may be obtained by a trustee to restrain his co-trustee from committing a breach of trust : *Chertsey Market Case*, 6 Price, 279. Against co-trustee.

Injunctions have been granted—

Examples :

To restrain an executor and trustee who had become bankrupt, from recovering the trust estate : *Gladdon v. Stoneman*, 1 Madd. 143 n. Against bankrupt trustee.

To restrain a purchaser from completing a purchase from a trustee for sale who had imposed depreciating

Against purchaser on sale

deemed  
breach of  
trust.

conditions: *Dance v. Goldingham*, 8 Ch. 902; *Merest v. Murray*, 14 L. T. N. S. 321; and see *Vann v. Barnett*, 2 B. C. C. 157; *Rede v. Oakes*, 4 D. J. & Sm. 505, *ante*, p. 120.

Against  
Friendly  
Society  
trustees.

To restrain trustees of a Friendly Society from applying funds in a manner dangerous to the well-being of the society: *Reeve v. Parkins*, 2 J. & W. 390.

Against  
appointing  
new trustee  
*pendente  
lite*.

To restrain a trustee from appointing a new trustee without the sanction of the Court, when the estate was in the course of administration by it: *Webb v. Shaftesbury*, 7 Ves. 487; see *ante*, p. 200.

Against  
trustee of  
power of  
sale in  
mortgage.

To restrain a trustee in whom the power of sale in a mortgage was vested, from selling, without giving notice to the mortgagor: *Anon.*, 6 Madd. 10; *Harding v. Pingey*, 10 Jur. N. S. 872; and see *Prichard v. Wilson*, 10 Jur. N. S. 330; *Gill v. Newton*, 12 Jur. N. S. 220.

Inquiry as  
to benefit  
from il-  
legal act.

Where a trustee without authority sold lands purchased with trust-money, the injunction was postponed to an inquiry as to whether the sale would be for the benefit of infant *cestuis que trust*: *Wiles v. Gresham*, 1 Eq. Rep. 348.

### *Ne Exeat against Trustees.*

Nature of  
writ.

A writ of *ne exeat regno* is granted on the application of a *cestui que trust* interested in property for which the trustee, proved to be intending an escape from the jurisdiction, may be liable in an action in the Chancery Division: *Leake v. Leake*, 1 J. & W. 605; Beames on *Ne Exeat*, p. 52; and see *Sobey v. Sobey*, 15 Eq. 200.

Demand  
must be  
equitable.

The demand must be of a purely equitable nature, enforceable only in a Court of Equity: *Ibid.*; *Graves v. Griffith*, 1 J. & W. 646; *Grant v. Grant*, 3 Russ. 598.

Interest  
may be  
vested  
liable to  
divest.

The interest of the *cestui que trust* must be a present vested interest, though such an interest liable to be divested will be enough to support the application for the writ: *Howkins v. Howkins*, 1 Dr. & Sm. 75, in which the bill was by infants, interested as a class under a gift to

them, followed by a gift over in case of the death of all of them under 21.

For the practice with regard to writs of *ne exeat*, see Practice. Dan. Ch. Pr., Ch. XXXVIII. p. 1584 *et seq.*; Additional Rules, Aug., 1875, Order V., r. 10; Morgan & Chute, p. 625.

### *Criminal Liability of Trustees.*

The criminal liability of trustees is regulated by ss. 80 and 86 of the Larceny Act, 24 & 25 Vict., c. 96, which sections are as follows:—

“Whosoever being a trustee of any property for the use or benefit, either wholly or partially, of some other person, or for any public or charitable purpose, shall, with intent to defraud, convert, or appropriate the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than such person as aforesaid, or for any purpose other than such public or charitable purpose as aforesaid, or otherwise dispose of or destroy such property or any part thereof, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable to [penal servitude for any term not exceeding seven years and not less than three years, or imprisonment for any term not exceeding two years, with or without hard labour, and with or without hard labour]—provided that no proceeding or prosecution for any offence included in this section shall be commenced without the sanction of Her Majesty’s Attorney-General . . . provided also that where any civil proceeding shall have been taken against any person to whom the provisions of this section may apply, no person who shall have taken such civil proceeding shall commence any prosecution under this section without the sanction of the Court or Judge before whom such civil proceeding shall have been had or shall be pending:” s. 80.

“Nothing in the last 11 preceding sections of this Act contained, nor any proceeding, conviction, or judgment to be had or taken thereon against any person under any of

the said sections, shall prevent, lessen, or impeach any remedy at law or in equity which any party aggrieved by any offence against any of the said sections might have had if this Act had not been passed ; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him ; and nothing in the said sections contained shall affect or prejudice any agreement entered into or security given by any trustee having for its object the restoration or repayment of any trust property misappropriated :” s. 86.

The liability of agents, bankers, merchants, brokers, or solicitors, is not to be confounded with that of trustees properly so called, and this distinction is expressly preserved by s. 75 of the Act in relation to the property comprised in, or affected by, any trust.

And the trust must have distinctly arisen, and not be one to arise upon some event which at the time of the indictment has not happened: *R. v. White*, 4 Car. & P. 46.

The Court will, in a case in which a conversion and appropriation by a trustee is clearly shown to have taken place, grant its leave to prosecute under the Act as a matter of course: *Wadham v. Rigg*, 1 Dr. & Sm. 216.

### *Striking Solicitor-Trustee off the Rolls.*

Where, in the course of an action, it appears that a solicitor has obtained moneys arising from the trust, the Court may, *ex proprio motu*, order him to show cause why he should not be struck off the Rolls: *Goodwin v. Gosnell*, 2 Coll. 457, 461 ; *Re Chandler*, 22 Bea. 253 ; *Thorndike v. Hunt*, 5 Jur. N. S. 879 ; *Thompson v. Finch*, 25 L. J. Ch. 681. See forms of orders, Seton, 651.



## CHAPTER XXXVII.

### OF CHARGING TRUSTEES WITH INTEREST FOR BREACH OF TRUST.

SIMPLE interest at 4 per cent. is the rate usually charged against trustees who retain balances in their hands which they ought to have invested, as they are presumed to have made interest to that extent: *Jones v. Foxall*, 15 Bea. 392; *Knott v. Cottee*, 16 Bea. 80; *Robinson v. Robinson*, 1 D. M. & G. 264; *Johnson v. Prendergast*, 28 Bea. 480; *Attorney-General v. Alford*, 4 D. M. & G. 843.

Four per cent.  
charged on  
uninvested  
moneys.

A trustee is not excused because he has kept an adequate sum at his bankers, or can prove his solvency: *Franklin v. Frith*, 3 B. C. C. 433; *Piety v. Stace*, 4 Ves. 622.

Solvency  
not an  
excuse.

Though directed to lay out the fund, it requires a special case of corruption as distinguished from negligence to charge him with more than 4 per cent.: *Tebbs v. Carpenter*, 1 Madd. 290.

Distinction  
between  
negligence  
and fraud.

Especially if the trusts are onerous, and the trustee can show other extenuating circumstances: *Ibid.*; *Crackelt v. Bethune*, 1 J. & W. 588.

Onerous  
trusts.

Retention of a legacy, though coupled with neglect to communicate the fact of the bequest to the legatee, is not a case for a greater rate of interest than 4 per cent.: *Attorney-General v. Alford*, 4 D. M. & G. 843.

Non-com-  
munication  
of bequest

If the trustee pay money to wrong persons, and retain a share for himself under a *bond fide* mistake of law, he is chargeable only with 4 per cent. on his own share: *Saltmarsh v. Barrett*, 31 Bea. 349; and see *Mousley v. Carr*, 4 Bea. 49; *Attorney-General v. Köhler*, 9 H. L. C. 655;

Wrong  
payment by  
*bond fide*  
mistake.

and as to a mistaken payment of interest, see *Remnant v. Hood*, 2 D. F. & J. 404.

Security  
given for  
trust  
moneys.

Though a trustee joined with his partners in a bond at 5 per cent. to secure moneys for which he was accountable, he was charged only with 4 per cent. as such trustee : *Fletcher v. Green*, 33 Bea. 426.

Interest  
given  
though  
not prayed.

Interest may be charged against a trustee on further consideration, on uninvested balances in his hands, though not prayed by the statement of claim : *Goodyere v. Lake*, Amb. 584 ; *Turner v. Turner*, 1 J. & W. 39 ; *Pearse v. Green*, 1 J. & W. 135 ; *Hollingsworth v. Shakeshaft*, 14 Bea. 497 ; *Holgate v. Haworth*, 17 Bea. 259 ; *Johnson v. Prendergast*, 28 Bea. 480 ; *Blogg v. Johnson*, 2 Ch. 229.

*Secus*,  
where com-  
pound  
interest  
asked.

But where compound interest is asked it seems that a case for that purpose ought to be made by the statement of claim : *Burdick v. Garrick*, 5 Ch. 243.

Interest on  
sum found  
by Chief  
Clerk.

Trustees are not liable to pay interest on the aggregate sum found by the Chief Clerk to be due in respect of arrears of an annuity, or of income, unless there has been misconduct or opposition to the orders of the Court : *Creuze v. Hunter*, 2 Ves. Jun. 157, 163 ; *Aylmer v. Aylmer*, 1 Moll. 87 ; *Martyn v. Blake*, 3 Dr. & W. 125 ; *Mansfield v. Ogle*, 4 D. & J. 41 ; *Blogg v. Johnson*, 2 Ch. 228.

Mere legal delay in procedure is no ground : *Martyn v. Blake*, *supra* ; *Mansfield v. Ogle*, *supra* ; *Blogg v. Johnson*, 2 Ch. 230.

The question is unaffected by the Statute of Limitations (3 & 4 Wm. 4, c. 42) : *Martyn v. Blake*, *supra* ; *Booth v. Leycester*, 3 M. & Cr. 459 ; *Re Powell*, 10 Ha. 134 ; *Mansfield v. Ogle*, *supra* ; and see *Crossley v. City of Glasgow Life Office*, 4 Ch. D. 421.

And the sum found by the certificate is not, even after confirmation, an order for payment of money which would bear interest under 1 & 2 Vict. c. 110 : *Martyn v. Blake*, *supra* ; *Mansfield v. Ogle*, *supra*.

Five per  
cent. in  
case of  
breach of

Simple interest at 5 per cent. is usually charged against trustees who are accountable for money through a direct breach of trust ; or have been guilty of other acts of mis-

conduct contributing to the particular result : *Tebbs v. Carpenter*, 1 Madd. 290 ; *Crackelt v. Bethune*, 1 J. & W. 588 ; *Jones v. Foxall*, 15 Bea. 391 ; *Knott v. Cottee*, 16 Bea. 77 ; *Attorney-General v. Alford*, 4 D. M. & G. 843 ; *Mayor of Berwick v. Murray*, 7 D. M. & G. 519 ; *Vyse v. Foster*, 8 Ch. 329, L. R. 7 H. L. 337.

trust or  
miscon-  
duct.

The ground of this rule is, that the trustee should be charged with the interest which he has received, or which he ought to have received, or which it is so fairly to be presumed that he did receive, that he is estopped from saying that he did receive it: *Attorney-General v. Alford*, *supra*.

Ground of  
the rule.

"It is not by way of punishment that the Court charges a trustee with more than he has received, or ought to have received, and the appropriate interest thereon. It is simply on the ground that the Court finds that he actually made more, constituting moneys in his hands had and received to the use of the *cestui que trust* : " *Vyse v. Foster*, 8 Ch. 333 ; and see *Attorney-General v. Alford*, *supra* ; *Burdick v. Garrick*, 5 Ch. 241.

Not  
charged  
as penalty.

If a trustee sells stock unnecessarily, and deals with the money, he must replace the stock, or its value with 5 per cent. : *Pocock v. Reddington*, 5 Ves. 794 ; *Crackelt v. Bethune*, *supra*.

Stock sold  
out in  
breach of  
trust.

If he calls in money out on good security at 5 per cent. he is chargeable at that rate : *Mosley v. Ward*, 11 Ves. 581 ; *Jones v. Foxall*, 15 Bea. 392.

Calling in  
good se-  
curities.

Although "*in odium spoliatoris omnia præsumuntur*," the Court charges no more than 5 per cent. against a trustee who may be taken to have kept money in his hands, fraudulently meaning to appropriate it: *Attorney-General v. Alford*, *supra*.

Keeping  
money with  
fraudulent  
intent.

Nor if he makes a false representation that debts are still due : *Crackelt v. Bethune*, 1 J. & W. 586.

Misrepre-  
sentation.

Or shows false accounts : *Stackpoole v. Stackpoole*, 4 Dow. 209.

False ac-  
counts.

Or if he refuse to account : *Wroe v. Seed*, 4 Giff. 425.  
It seems that disobedience of a direction to invest in

Refusal to  
account.  
Direction

to invest  
in "good  
security.

"good securities," or "at the best interest," makes him liable to 5 per cent. interest: *Forbes v. Ross*, 2 B. C. C. 430; *Piety v. Stace*, 4 Vcs. 620.

Receiver  
charged.

A receiver dealing with moneys is charged as for a breach of trust: *Lonsdale v. Church*, Rolls, 17 Dec. 1789, cited *Newton v. Bennet*, 1 B. C. C. 362.

Bank-  
ruptcy  
trustees.

A bankruptcy trustee keeping money in hand, and not paying a dividend, is charged in like manner: *Treves v. Townshend*, 1 B. C. C. 384; *Exp. Ogle*, 8 Ch. 716; and see *Hicks v. Hicks*, 3 Atk. 274; *Foster v. Foster*, 2 B. C. C. 616.

Five per  
cent. on  
moneys  
embarked  
in trade.

If a trustee makes a profit by an improper dealing with the trust-fund, that profit he must give up to the *cestui que trust*. If that improper dealing consists in embarking or investing the trust-money in business, he must account for the profits made by him by such employment, or at the option of the *cestui que trust*, or if it does not or cannot be made to appear what profits are attributable to such employment, he must account for trade interest, *i.e.*, interest at 5 per cent.: *Vyse v. Foster*, 8 Ch. 329, L. R. 7 H. L. 337; *Docker v. Somes*, 2 M. & K. 655; *Montgomerie v. Wauchope*, 4 Dow. 131; *Heathcote v. Hulme*, 1 J. & W. 128; *Palmer v. Mitchell*, 2 M. & K. 672 n.; *Flockton v. Bunning*, 8 Ch. 323 n.

on the  
profit  
made.

Inquiry as  
to profits.

Though an inquiry is indispensable to give effect to this option, and such inquiry must be of a very special nature, the difficulties attending it will not prevent the Court from endeavouring to prosecute it: *Docker v. Somes*, 2 M. & K. 655.

Both in-  
terest and  
profits not  
claimable.

The *cestui que trust* cannot claim both a share of profits and interest: *Vyse v. Foster*, 8 Ch. 334.

Profits  
partly  
and in-  
terest  
partly.

But in a proper case interest may be given with respect to part of the time and profits with respect to other part: *Heathcote v. Hulme*, 1 J. & W. 122; *Burden v. Burden*, cited in judgment 1 J. & W. 135.

Charging  
persons  
engaged  
with trust.

Persons who join trustees in embarking trust-moneys in trade are liable with them: *Cook v. Collingridge*, Jac. 620; *Flockton v. Bunning*, 8 Ch. 323 n.; *Vyse v. Foster*,

8 Ch. 329; and see *Bowes v. City of Toronto*, 11 Moo. P. C. 463. tees in trade.

### *Compound Interest or Rests.*

If there is a clear trust for accumulation of an infant's legacy or for the benefit of creditors, and non-investment, the trustee may be chargeable with the rate of interest appropriate to the case under the above rules, with rests: see *Raphael v. Boehm*, 11 Ves. 111, 13 Ves. 407, 590; *Court v. Robarts*, 6 C. & F. 65; *Knott v. Cottee*, 16 Bea. 80; *Townend v. Townend*, 1 Giff. 201. Compound interest where direction to accumulate.

In the case of trading with trust money it may be that, independently of anything in the particular nature of terms of the trust, a trustee, who suffers money which he ought to call in, to be used in a business in which he has an interest may be chargeable with compound interest: *Vyse v. Foster*, L. R. 7 H. L. 347; *Burdick v. Garrick*, 5 Ch. 233. Whether in case of trading.

Thus, where a testator gave liberty to trade, and it was agreed that part of the profits should be capitalised, the trustee was held liable for interest at 5 per cent., with interest upon the capitalised profits: *Stroud v. Gwyer*, 28 Bea. 130.

But, as a general rule, rests are not to be added to the interest chargeable in these case: *Vyse v. Foster*, L. R. 7 H. L. 318, 347, dissenting from *Jones v. Foxall*, 15 Bea. 388, on that point; *Burdick v. Garrick*, 5 Ch. 233; but see *Walker v. Woodward*, 1 Russ. 107; *Williams v. Powell*, 15 Bea. 468.

With regard to the liability of a trustee or executor employing funds of his deceased partner in the partnership business, see *Crawshay v. Collins*, 1 J. & W. 267, 279; *Cook v. Collingridge*, Jac. 607; *Stocken v. Dawson*, 9 Bea. 239; *Wedderburn v. Wedderburn*, 22 Bea. 84; *Willett v. Blanford*, 1 Hare, 253; *Travis v. Milne*, 9 Hare, 141; *Vyse v. Foster*, L. R. 7 H. L. 318, Trustee trading with deceased partner's money.

## CHAPTER XXXVIII.

### NOTICE TO TRUSTEES ON ASSIGNMENTS OF EQUITABLE INTERESTS.

Purchaser takes subject to equities.

A PURCHASER of a chose in action, future or reversionary interest, takes it subject to all the equities affecting it : see Lewin, 575 ; the note to *Ryall v. Rowles*, 2 W. & T. L. C. 770, as to what will constitute an equitable assignment ; and s. 25, sub-section 6, of the Judicature Act, 1873 (36 & 37 Vict. c. 66), which refers to absolute assignments of debts or legal choses in action.

As between assignor and assignee.

Notice is not required to be given to the debtor or trustees of the assignor in order to make the title of the assignee good as against him : *Donaldson v. Donaldson*, Kay, 711 ; *Re Way*, 2 D. J. & Sm. 365 ; *Re Lowe*, 30 Bea. 95, 97 ; see *ante*, p. 40, as to the effect of absence of notice in the case of voluntary assignments.

Where no notice.

But if no notice is given to the trustees, they would be justified in transferring the property assigned to the original *cestui que trust* for whom they held it ; and if they did so, there would be no remedy against them : *Donaldson v. Donaldson*, Kay, 719 ; *Stocks v. Dobson*, 4 D. M. & G. 11 ; and it is possible that the donee might not be able to recover the property ; but all that the donee has to do is, at any time he thinks fit, to give notice to the trustees before the property is transferred ; and when he has given such notice his title is complete ; and unless the donor or his executors actually obtain possession of the fund, the donee does not require the aid of the Court against them : *Donaldson v. Donaldson*, *supra*, at p. 719.

The fact that the trustees are themselves the executors of the assignor makes no difference : *Ibid.*

Where trustees are executors.

But as against subsequent rights created by the assignor, either by assignment or by way of incumbrance, the notice to the trustees is all-important : *Dearle v. Hall*, 3 Russ. 1 ; *Loveridge v. Cooper*, *Ibid.* 30, 48 ; *Foster v. Cockerell*, 3 Cl. & F. 456 ; *Lloyd v. Banks*, 3 Ch. 488.

Notice as against subsequent rights.

The ground of this rule is, that if a contrary doctrine were allowed to prevail, it would enable the *cestui que trust* to commit a fraud by enabling him to assign his interest first to one and then to a second incumbrancer, and perhaps, indeed, many more ; and these later incumbrancers would have no opportunity of ascertaining, by any communication with the trustees, whether or not there had been a prior assignment of the interest, on the security of which they were relying for provision for their claims : *per* Lord Lyndhurst, in *Foster v. Cockerell*, 3 Cl. & F. 475 ; and see *Martin v. Sedgwick*, 9 Bea. 333.

Ground of the rule.

With regard to the absence of notice having the effect of leaving the property assigned in the order and disposition of a bankrupt assignee, see *Exp. Boulton*, 1 D. & J. 163 ; *Re Rawbone*, 3 K. & J. 476 ; *Pierce v. Brady*, 23 Bea. 64 ; *Exp. Rogers*, 8 D. M. & G. 276 ; *Re Tichener*, 35 Bea. 317, 319. There is a direct conflict between the cases, on this subject, of *Exp. Caldwell*, 13 Eq. 188, and the cases of *Stuart v. Cockerell*, 8 Eq. 607, and *Re Russell*, 15 Eq. 26.

Order and disposition

The notice operates not only to prevent the property, which is the subject of the notice, being disposed of, without the knowledge of the person by whom, or on whose behalf the notice is given, but also to prevent injury to other persons from subsequent dealings with the property, affected by the notice in ignorance of the prior claim upon it : *per* Turner, L. J., in *Exp. Boulton*, 1 D. & J. 179.

Effect of notice.

Such persons have no means of ascertaining whether any prior assignments, or charges, have been created but

by applying for information to the trustees, who must for their own security, give correct information when inquiry is made of them, whether they have had notice of any prior assignments affecting their trust property: *per* V.-C. Kindersley, in *Browne v. Savage*, 4 Drew. 639.

Construc-  
tive notice.

It seems that notice to the trustee's solicitor is notice to them: *Rickards v. Gledstanes*, 3 Giff. 298; *Exp. Rogers*, 8 D. M. & G. 271; and see *Espin v. Pemberton*, 3 D. & J. 547.

And knowledge acquired in the course of trust business may perhaps bind the trustees: *Exp. Stewart*, 11 Jur. N. S. 25; *Edwards v. Martin*, 1 Eq. 121; *Re Brown*, 5 Eq. 88; *Lloyd v. Banks*, 3 Ch. 488; *Exp. Agra Bank*, 3 Ch. 555.

Times of  
notices.

As between two equitable assignees, the time when notice is given is of no importance, if both notices are given previous to the period when the relation of trustee and *cestui que trust* is created, where that relation is not constituted until the money is actually received by, or is due from the trustee. When the relation of trustee and *cestui que trust* has been created, the priorities take effect according to the notices: *per* Lord Romilly, in *Webster v. Webster*, 31 Bea. 393; following *Buller v. Plunkett*, 1 J. & H. 441; approved in *Addison v. Cox*, 8 Ch. 79.

Notice to  
person  
bound to,  
but not  
trustee to,  
pay.

But it seems that it is enough for priority—enough to complete the equitable assignment of a chose in action—if notice be given to the person by whom payment of the assigned debt is to be made, whether that person is himself liable or is merely charged with the duty of making the payment. Nor is it material whether the right to receive the money and the consequent obligation to pay it, is, at the time when the notice is given, absolute or conditional, so long as the person who receives the notice is himself bound by some contract or obligation, existing at the time when the notice reaches him, to receive and pay over, or to pay over, if he has previously received, the fund out of which the debt is to be satisfied: *per* Lord Selborne, C., in *Addison v. Cox*, 8 Ch. 79.



The doctrine of the efficacy of notice to secure priority does not apply to real estate: *Jones v. Jones*, 8 Sim. 633; *Wilmot v. Pike*, 5 Hare, 14; *Malcolm v. Charlesworth*, 1 Keen, 63; *Lee v. Howlett*, 2 K. & J. 531; and see *Phipps v. Lovegrove*, 16 Eq. 80. Real estate.

Nor to an assignment of an equitable estate in a leasehold for years or other chattels real: *Wiltshire v. Rabbits*, 14 Sim. 76. Leaseholds.

But a charge on the produce of the sale of land is within the doctrine: *Foster v. Cockerell*, 9 Bli. N. R. 332; 3 Cl. & F. 475; *Daniel v. Freeman*, 1 R. 8 Eq. 233; or, *semble*, land devised upon trust for sale: *Consolidated Investment Company v. Riley*, 1 Giff. 371. Sale-moneys.

And so also is an incumbrance by a portionist upon his portion, charged upon land: *Re Hughes*, 2 H. & M. 89. Charge on portion.

Notice gives no priority to a judgment creditor: *Scott v. Hastings*, 4 K. & J. 633; and see *Haly v. Barry*, 3 Ch. 452; *Gill v. Continental Gas Co.*, L. R. 7 Ex. 332. Judgment creditor.

A verbal notice is sufficient, but dangerous: *Browne v. Savage*, 4 Dr. 640; *Re Tichener*, 35 Bea. 317, 318, and the cases cited; *Exp. Agra Bank*, 3 Ch. 555. Verbal notice.

But the burden of proof is on those who say they gave the verbal notice, and gave it in a sufficiently precise manner to constitute a formal notice which the trustee was bound to remember: *Re Tichener*, *supra*.

Notice *bond fide* given to one of a number of trustees, so long as that one is living, is notice given to them all: it is the duty of that trustee to communicate the information so received to the other trustees, like everything relating to the trust, and it is assumed that he has acted accordingly: *Meux v. Bell*, 1 Ha. 73; *Browne v. Savage*, 4 Drew. 640; *Willes v. Greenhill*, 29 Bea. 376, 389, 4 D. F. & J. 147. Notice to one trustee.

But where one of the trustees is a beneficiary and assigns his beneficial interest in the trust fund to a stranger, a notice so acquired by him as assignor, is not notice to the trustees, it being the interest of such trustee as assignee to conceal the assignment: *Browne v. Savage*, Where one trustee beneficially entitled.

4 Drew. 635 ; and see *Commissioners of Works v. Harby*, 23 Bea. 508, 511.

But where such trustee assigned his beneficial interest to one of his co-trustees, the notice which that co-trustee acquired, as assignee, constituted notice to all the trustees, it not being his interest as assignee to conceal the assignment : *Ibid*.

New trustees.

It seems that new trustees are not bound to inquire of the old trustees whether they have received notice of any incumbrance : *Phipps v. Lovegrove*, 16 Eq. 80.

Trustees of appointment.

Notice should be given, not only to trustees under a deed exercising a power of appointment, but also to the trustees of the settlement creating the power ; *Bridge v. Beadon*, 3 Eq. 664.

Distringas.

Besides giving notice of equitable assignments it is also advisable, if the assignee desires to be perfectly secured, to obtain a distringas on the funds, or to have his deed endorsed on the original deed : *Phipps v. Lovegrove*, 16 Eq. 80 ; and this is especially important in cases where, owing to death or intestacy, there is no trustee in existence to whom notice can be given : *Etty v. Bridges*, 2 Y. & C. C. C. 486.

Charging Order.

If the fund is in Court a charging order should be obtained, as to which see Order XLVI., r. 1 ; *Morgan & Chute*, 58 *et seq*.

## CHAPTER XXXIX.

### FOLLOWING THE TRUST ESTATE INTO THE HANDS OF PURCHASERS AND OTHERS.

A PURCHASER for value *bonâ fide* paid, and without notice of the trust, will not be liable to the claims of the *cestuis que trust*, who cannot, therefore, follow the trust into his hands: *Basset v. Nosworthy*, Finch, 102; *Jerrard v. Saunders*, 2 Ves. Jun. 456.

Purchase without notice of trust.

The plea of purchase for value without notice of a trust is an absolute, unqualified, unanswerable defence, and an unanswerable plea to the jurisdiction of the Court: *per James, L. J.*, in *Pilcher v. Rawlins*, 7 Ch. 259; see similar expressions in *Jerrard v. Saunders*, 2 Ves. Jun. 456.

Nature of plea of purchase for value.

But if the purchaser be affected with notice of the trust he is converted into a trustee, because the wrongful receipt and conversion of trust property place the receiver in the same situation as the trustee from whom he received it; and by the principles of the Court he becomes subject in a Court of Equity to the same rights and remedies as may be enforced by the parties beneficially entitled against the fraudulent trustee himself. This relief is founded on fraud and not on constructive trust. When it is said that the person is converted into a trustee, the expression is used for the purpose of describing the nature and extent of the remedy against him, and it denotes that the parties entitled beneficially have the same rights and remedies against him as they would be entitled to against an express trustee who had fraudulently committed a breach of trust: *Rolfe v. Gregory*, 4 D. J. & Sm. 576.

Purchaser with notice a trustee.

Notice of a trust operates by affecting the conscience of the party, who, though a purchaser for value, is not a *bond fide* purchaser, for he takes the legal title knowing the right in equity to belong to another: *Dunbar v. Tredennick*, 2 B. & B. 304, 318; *Saunders v. Dehew*, 2 Vern. 271; *Mead v. Orrery*, 3 Atk. 238; *Le Neve v. Le Neve*, Amb. 436, 3 Atk. 646; *Taylor v. Stibbert*, 2 Ves. Jun. 437; *Adair v. Shaw*, 1 Sch. & L. 262.

Set-off.

So a person indebted to the *cestui que trust* of a trustee, who is himself indebted to the first-named person, cannot, having notice of the trust, be allowed to set off one debt against the other: *Pannell v. Hurley*, 2 Coll. 241.

Where  
defence  
rests on  
deed dis-  
closing  
trust.

The defence is good, though in order to make out his title to the legal estate the purchaser must rely on an instrument which discloses the title of the plaintiff, the defendant not having had notice of such instrument at the time of his purchase: *Pilcher v. Rawlins*, 7 Ch. 259, in which case James and Mellish, L. JJ., disapproved, and Hatherley, C., explained *Carter v. Carter*, 3 K. & J. 617, *contra*; *Monckton v. Braddell*, 1 R. 7 Eq. 30.

Defective  
title.

From a purchaser for value without notice the Court takes away nothing which that purchaser has honestly acquired; but if a purchaser for value without notice, however honest, on the completion of his purchase, acquires a defective title, the Court will not allow that title to be strengthened either by his own fraud or the fraud of any other person: *Heath v. Crealock*, 10 Ch. 22, 33.

Interroga-  
tories as to  
*bond fides*  
and notice.

The defendant putting forward the plea of purchaser for value without notice may be interrogated, so as to show *mala fides*, and also as to the fact of notice: *Pilcher v. Rawlins*, 7 Ch. 259.

One wit-  
ness not  
enough.

One witness is not enough against the denial of notice of the trust by the defendant: *Howorth v. Deem*, 1 Ed. 355; *Mertins v. Jolliffe*, Amb. 311; *Plumb v. Fluit*, 2 Anst. 438; *Pember v. Mathers*, 1 B. C. C. 52; *Cranstown v. Johnston*, 3 Ves. 170; *Evans v. Bicknell*, 6 Ves. 185; *East India Co. v. Donald*, 9 Ves. 275; *Pilling v. Armitage*, 12 Ves. 80.

A plea of purchase or mortgage for value without a denial of the notice is insufficient, for there is no *constat* traversing the facts from which notice has been inferred: *Jerrard v. Saunders*, 2 Ves. Jun. 187, 455, 4 B. C. C. 322; and see *Phillips v. Phillips*, 4 D. F. & J. 208; *Vane v. Vane*, 8 Ch. 383, 401. Must deny notice.

The plea of purchase for value without notice is good against the legal estate got in by one who acquires another equitable title, as well as against the equitable title where the legal estate is conveyed to the purchaser himself: the equities then coming under the rule that *qui prior est tempore, potior est jure*: *Joyce v. De Moleyns*, 2 J. & L. 374; *Colyer v. Finch*, 5 H. L. C. 905; *Phillips v. Phillips*, 4 D. F. & J. 216. Equal equities.

The Court does not order the delivery up of deeds in the possession of a person who sets up the plea: *Wallwyn v. Lee*, 9 Ves. 24; *Hunt v. Elmes*, 2 D. F. & J. 578; *Thorpe v. Holdsworth*, 7 Eq. 139; *Heath v. Crealock*, 10 Ch. 22; *Waldy v. Gray*, 20 Eq. 238. Deeds not ordered to be delivered up.

Where the deeds are in the possession of an equitable mortgagee with notice of the trust, they will probably be ordered to be delivered up: *Newton v. Newton*, 6 Eq. 135, 4 Ch. 143.

If trustees make a voluntary conveyance of the trust property, the grantee, though he have no notice of the trust, stands in the place of the grantors, and is liable to the trust in the same manner as the trustees were liable to it, and the property may be followed by the *cestuis que trust*: *Mansell v. Mansell*, 2 P. W. 681; *Fearne*, 326; *Garth v. Cotton*, 1 Dick. 199; *Moody v. Walters*, 16 Ves. 302; *Biscoe v. Perkins*, 1 V. & B. 491; *Mumford v. Stohwasser*, 18 Eq. 556. Where no notice of voluntary grant given.

Where trustees have joined in destroying contingent remainders by a conveyance (before 8 & 9 Vict. c. 106), they are guilty of a breach of trust, and whether the settlement have been by will or any other voluntary settlement, the remedy will be that they should purchase other lands to be settled to the same uses: *Mansell v. Mansell*, 2 P. W. 680. Destruction of contingent remainders.

Rights obtained after purchase with notice.

A purchaser, with notice of a trust, who acquires a valuable right in respect of the property purchased, must surrender such right for the benefit of the *cestuis que trust*: *Aberdeen Town Council v. Aberdeen University*, L. R. 2 App. Ca. 544.

Sale by purchaser without notice to another with notice.

If a purchaser without notice sell to a person who has notice, the sale will be good: *Harrison v. Forth*, Pr. Ch. 51; *Mertins v. Jolliffe*, Amb. 313; *Andrew v. Wrigley*, 4 B. C. C. 136; *Salsbury v. Bagott*, 2 Swans. 608.

By one with to one without.

And if the sale be by a purchaser with notice to a purchaser without notice, the title will be good, unless the vendor be the trustee himself: *Mertins v. Jolliffe*, Amb. 313; *Ferrars v. Cherry*, 2 Vern. 384; *Bovey v. Smith*, 1 Vern. 60; *Kennedy v. Daly*, 1 Sch. & L. 379.

But a purchaser for value who, though without any personal notice of a fraud, contracts through an agent who knows of the fraud, cannot protect himself under s. 26 of the Statute of Limitations (3 & 4 Will. 4, c. 27): *Vane v. Vane*, 8 Ch. 383.

Purchase from purchaser who has not paid.

The principle that notice binds a purchaser for value is extended to the case of the vendor's lien for unpaid purchase money, enabling the vendor to enforce such lien in the hands of a sub-purchaser of the estate, with notice that the purchase-money remained unpaid: *Mackreth v. Symmons*, 15 Ves. 329; and see *Shaw v. Foster*, L. R. 5 H. L. 321; *Crabtree v. Poole*, 12 Eq. 13. As to the abandonment of the lien by the vendor taking security or otherwise, see *Dart, V. & P. 733 et seq.* 5th ed.

Fraud prevents acquiescence.

As the remedy is given on the ground of fraud, it is governed by the principle that the right of the party defrauded is not affected by lapse of time, or, generally speaking, by anything done or omitted to be done, so long as he remains without any fault of his own in ignorance of the fraud that has been committed: *Rolfe v. Gregory*, 4 D. J. & Sm. 576.

Legal estate got in after notice no protection.

The acquisition of the legal estate after notice of the trust affords no protection to the purchaser, for by taking a conveyance with such notice he himself becomes a

trustee, and must not "to get a plank to save himself" be guilty of a breach of trust: *Saunders v. Deheu*, 2 Vern. 271; *Allen v. Knight*, 5 Hare, 272; *Mumford v. Stohwasser*, 18 Eq. 556; and see *Sturgis v. Morse*, 3 D. & J. 1.

Thus, equitable mortgagees, knowing that the mortgagor was a mere trustee, obtained no better equity by getting a legal mortgage: *Baillie v. McKewan*, 35 Bea. 177.

Trustee giving equitable mortgage.

The priorities of successive incumbrancers are not altered by one of them getting in the legal estate from a trustee for them all: *Sharples v. Adams*, 32 Bea. 213.

Legal estate in trustee for mortgagee.

The purchaser of an equitable charge from a person who took out administration to a man supposed to be, but who was not, dead, was not allowed to defend himself against the true owner by means of an assignment of the term created upon the express trust to raise the charge: *Monckton v. Braddell*, 1 R. 7 Eq. 30.

Getting in legal term.

On the other hand, if a legal term, without any express trust attaching to it, is got in, it may be available against other than equitable claims against it: *Jones v. Powles*, 3 M. & K. 581; see on this point *Maundrell v. Maundrell*, 10 Ves. 260; *Carter v. Carter*, 3 K. & J. 639; *Pilcher v. Rawlins*, 7 Ch. 267.

It is a mistake to suppose that the trustees or any of the persons concerned in a breach of trust are primarily liable; they are all equally liable; and the plaintiffs have a right to proceed against such of them as they think fit: *Wilson v. Moore*, 1 M. & K. 143, 146.

Against whom estate may be followed.

The knowledge of the solicitor is constructive notice to his client the purchaser, who is therefore bound by trusts known to the solicitor, and liable to the right of the *cestui que trust* to follow the property into his hands: *Le Neve v. Le Neve*, Amb. 436, 3 Atk. 646, 1 Ves. Sen. 64; *Brotherton v. Hatt*, 2 Vern. 574; *Bourso v. Savage*, 2 Eq. 134.

Constructive notice.

This is the usual result in cases where the same solicitor is employed by both vendor and purchaser: *Ibid.*; and

see *Baillie v. McKewan*, 35 Bea. 183 ; *Maxfield v. Burton*, 17 Eq. 15.

It has been observed that there is no difference between actual personal notice and constructive notice, except as to guilt : *Sheldon v. Cox*, 2 Ed. 228.

A purchaser who employs as his solicitor the solicitor-trustee who is one of the vendors, and who by forgery conveys to him in the names of all the trustees, has constructive notice of the trust, and cannot set up the defence of purchase for value without notice : *Boursot v. Savage*, 2 Eq. 134.

Notice by  
nature of  
transac-  
tion.

If the nature of the transaction affords intrinsic evidence that the executor on a mortgage or sale by him is not acting in the execution of his duty, but is committing a breach of trust, as where the consideration for the mortgage or sale is a personal debt due from the executor to the mortgagee or purchaser, there the mortgagee or purchaser, being a party to the breach of trust, does not hold the property discharged from the trusts, but equally subject to the payment of debts and legacies as it would have been in the hands of the executor : *Watkins v. Cheek*, 2 S. & S. 205 ; but see *Corser v. Cartwright*, L. R. 7 H. L. 731.

Persons who, as commercial correspondents of executors, and knowing that stock remitted to them, in payment of a debt due by the executors, was subject to the trusts of a will, are thus personally liable to those entitled under the will : *Wilson v. Moore*, 1 M. & K. 143, 146. See further as to the right to follow assets disposed of by executors, *Mead v. Orrery*, 3 Atk. 238 ; *Hill v. Simpson*, 7 Ves. 152, and *Williams, Exors.*, p. 934.

Notice  
from re-  
citals, &c.

In all cases where the purchaser cannot make out a title except by a deed which leads him to another fact involving notice of a trust, he is not allowed to set up the defence of purchase for value without notice of that fact, but is presumed to be cognisant of it ; for it is *crassa negligentia* that he did not discover it : *Plumb v. Fl Witt*, 2 Anst. 438 ; *Jackson v. Rowe*, 2 S. & S. 472, 4 Russ. 514.



Notice acquired in one transaction of a trust affecting other property, does not bind a purchaser in a subsequent transaction when he purchases such other property: *Hamilton v. Royse*, 2 Sch. & L. 327.

Notice must be in same transaction.

Though the character of the notice when given to the purchaser, or acquired by him, be not precisely justified by the nature of the equitable claim, or may not disclose a perfectly clear equity, it may still be enough to put the purchaser on his inquiry: *Taylor v. Baker*, 5 Price, 306; *Cordwell v. Mackrill*, Amb. 516; *Hardy v. Reeves*, 4 Ves. 466, 5 Ves. 426; *Parker v. Brooke*, 9 Ves. 588. See further as to what amounts to notice, the note to *Le Neve v. Le Neve*, 2 W. & T. L. C. 49 *et seq.*

Notice of equity not clearly established.

Though the purchaser did not know of the trust when he paid his money, he is bound if he have notice of it before he executes the deed: *Wigg v. Wigg*, 1 Atk. 381; *Tourville v. Naish*, 3 P. W. 306; but see *Dodds v. Hills*, 2 H. & M. 424.

Notice before conveyance enough.

And the plea of purchase for value without notice must be that the purchaser had no notice either at the time of payment or at or before the execution of the conveyance: *Story v. Windsor*, 2 Atk. 630; *Maundrell v. Maundrell*, 10 Ves. 271; *Taylor v. Baker*, 5 Price, 306; *Tildesley v. Lodge*, 3 Sm. & G. 543; but see *Fitzgerald v. Burk*, 2 Atk. 397.

Form of plea.

It is not enough for the purchaser to say that the price is secured to be paid: *Hardingham v. Nicholls*, 3 Atk. 304.

Security for value not enough.

Or that part of it has been paid: *Rayne v. Baker*, 1 Giff. 241.

Part payment.

### *Following Money arising from the wrongful Conversion of the Trust Estate.*

The property of a principal entrusted by him to his factor for any special purpose belongs to the principal, notwithstanding any change which that property may have undergone in point of form, so long as such property

General principle.

is capable of being identified and distinguished from all other property. All property thus circumstanced is equally recoverable from the trustee in bankruptcy of the factor, as it was from the factor himself before his bankruptcy: *Taylor v. Plumer*, 3 M. & S. 562, 573, 574; *Frith v. Cartland*, 2 H. & M. 417.

If the property in its original state and form was covered with a trust in favour of the principal, no change of that state and form can divest it of such trust, or give the factor, or those who represent him in right, any other or more valid claim in respect to it, than they had before such change: *Ibid.* at p. 574.

All property traceable may be followed.

As between *cestui que trust* and trustee, and all parties claiming under the trustee, otherwise than by purchase for value without notice, all property belonging to a trust, however it may be changed or altered in its nature or character, and all the fruit of such property, whether in its original or its altered state, continues to be subject to, or affected by, the trust: *Pennell v. Deffell*, 4 D. M. & G. 372.

Sale of trust stock.

Where a trustee employs a broker to sell trust stock, giving him full notice that it is trust stock, and to invest the proceeds on behalf of the trust estate, the money arising from the sale is trust money, and by no bargain between the trustee and the broker, nor by any rule of the Stock Exchange, can it be made anything but trust money, liable to be followed as such, if it can be traced, the difficulty of doing which does not affect the principle: *Exp. Cooke*, 4 Ch. D. 123, following *Taylor v. Plumer*, 3 M. & S. 562.

It seems, moreover, that even if there had been no notice to the broker that the money was trust money, the rule in *Taylor v. Plumer* would have applied to this case: *Ibid.*

Difficulty of tracing does not alter rule.

The difficulty which arises is a difficulty of fact and not of law, and the dictum that money has no ear-mark must be understood in the same way, viz., as predicated only of an undivided and undistinguishable mass of current

money. But money in a bag or otherwise kept apart from other money, guineas or other coin marked (if the fact were so) for the purpose of being distinguished, are so far ear-marked as to fall within the rule on this subject, which applies to every other description in the hands of the factor [or trustee] or his general legal representative: *Taylor v. Plumer*, 3 M. & S. 575.

The general use of cheques now makes it more difficult to trace money, as the cheques go into a banking account, so that the sum is mixed up with other moneys of the customer. But the money, so far as it can be traced as the property of the client, is covered by the reason of the thing, and the authority of *Taylor v. Plumer*: *per* Bramwell, L. J., in *Exp. Cooke*, 4 Ch. D. 128.

The guiding principle is that a trustee cannot assert a title of his own to trust property. If he destroys a trust fund by dissipating it altogether, there remains nothing to be the subject of a trust. But so long as the trust property can be traced and followed into other property into which it has been converted, that remains subject to the trust: *Frith v. Cartland*, 2 H. & M. 417, 420.

Where trust fund lost.

The sole question is whether the property can or cannot be identified: *Ibid.*, p. 421; see *Liebman v. Harcourt*, 2 Mer. 513; *Harford v. Lloyd*, 20 Bea. 310.

If a man mixes trust funds with his own the whole will be treated as the trust property, except so far as he may be able to distinguish what is his own: *Frith v. Cartland*, 2 H. & M. 420; *Cook v. Addison*, 7 Eq. 471.

Mixing trust moneys with private moneys.

An injunction may be obtained to restrain the transfer of stock by the trustee [or person affected by the rule], upon evidence that it is trust money, at least until the trustee have distinguished any part which is not trust property: *Chedworth v. Edwards*, 8 Ves. 46; *Lupton v. White*, 15 Ves. 432.

Injunction to restrain transfer.

But no injunction can be obtained in a case where the trust fund has been paid into a bank to the trustee's own account, and by the application of the rule in *Clayton's*

Extinction of fund under rule in Clayton's case.

*Case* (1 Mer. 572) *infra*, the fund has been extinguished : *Brown v. Adams*, 4 Ch. 764.

Money  
paid into  
bank.

A trustee who pays money into his own account at his banker's is liable to his *cestui que trust* for the moneys he has so paid in, for he has no right to mix the trust moneys with his own, or to subject his *cestui que trust* to the difficulty of separating them : *Massey v. Banner*, 1 J. & W. 241.

Liability of  
banker.

The liability of the banker depends upon whether or not he has notice that the account is a trust account ; and he may be fixed with such notice by the nature of the heading of the account : *Pannell v. Hurley*, 2 Coll. 241 ; *Bridgman v. Gill*, 24 Bea. 302.

So if a person, keeping an undoubted trust account, draws upon it, and pays the proceeds into his private account, the bankers may be liable for his breach of trust : *Bodenham v. Hoskyns*, 2 D. M. & G. 903 ; and see *Exp. Kingston*, 6 Ch. 632.

Money in  
bank at  
death of  
trustee.

And if a trustee pays into a bank trust money, and also his own private money, to an account not marked or distinguished as a trust account, that does not prevent the balance at his death being properly distributed between the trust and his own estate : *Pennell v. Deffell*, 4 D. M. & G. 372.

Money in  
bank how  
appro-  
priated.

The result of tracing the money standing to the account into the trust, is however subject to the rule that money drawn out of the account is to be applied or appropriated to the earlier items on the opposite side of the account, so that it might well happen that no part of the balance would represent the trust fund originally paid in : *Clayton's Case*, 1 Mer. 572 ; *Brown v. Adams*, 4 Ch. 764.

Banker is  
not trust-  
ee.

It must be borne in mind that there is no fiduciary relation between the banker and his customer : *Foley v. Hill*, 2 H. L. C. 28. And, regarding their true position as that of debtor and creditor, "by every payment which he makes, the banker discharges so much of the debt which he first contracted. If that debt arose from trust moneys

paid in by the customer, so much of those trust moneys is paid off, and unless otherwise invested on account of the trust, falls into the customer's general estate, and is lost to the trust, because it cannot be distinguished from the general estate of which it formed part. If, on the other hand, the earliest debt due from the banker arose from the customer's own money paid in by him, that debt is *pro tanto* discharged, and the trust moneys subsequently paid in remain unaffected. The same principle runs through the whole account: each sum drawn out goes to discharge the earliest debt due from the banker, which is remaining unpaid; and thus, when it is ascertained what moneys have been paid in belonging to the trust, it becomes clear to what portion of the balance which remains, the trust estate is entitled": *Pennell v. Deffell*, 4 D. M. & G. 372.

This rule is not applicable to fraudulent items in the account: *Lacey v. Hill*, 4 Ch. D. 554.

Fraudulent items.

The agent or solicitor of a trustee, who obtains possession of the trust funds, and whose acts are not in strict conformity with his duty as such agent or solicitor, ceases to be a mere agent, and, whether he made a profit or not, he must account as a trustee: *Myler v. Fitzpatrick*, 6 Madd. 360; *Fyler v. Fyler*, 3 Bea. 550, 568; *Marshall v. Sladden*, 7 Hare, 428, 441; *Morgan v. Stephens*, 3 Giff. 226; *Hardy v. Caley*, 33 Bea. 365; but see *Barnes v. Addy*, 9 Ch. 251 quoted, *supra*, p. 72.

Agents and solicitors acting within authority.

But the solicitor of the trustees is not an accounting party if he has limited his acts strictly to his character of solicitor: *Maw v. Pearson*, 28 Bea. 196; or unless he has been guilty of fraud: *Marshall v. Sladden*, 7 Ha. 442.

Money entrusted to a solicitor to invest in a particular mortgage may be followed into another security in the solicitor's own name on the same property: *Middleton v. Pollock*, 4 Ch. D. 49; and see *Hopper v. Conyers*, 2 Eq. 549.

Money entrusted to solicitor for mortgage.

A wife may follow trust property, settled before her marriage, into the hands of her husband; and if he have

Right of wife against husband.

got rid of it, she has a lien on other funds formerly her own, but of which he has obtained possession : *Hastie v. Hastie*, 2 Ch. D. 304.

Person having shares of his own and on trust.

If a person have shares in his own right and also as a trustee, and sells some of them, those which he sells must be taken to be those to which he was entitled in his own name, leaving the rest to answer the trust : *Pinkett v. Wright*, 2 Hare, 120, 12 Cl. & F. 764.

Following fund in Court.

Money paid by order into Court by trustees of a settlement, but being in fact money subject to the trusts of another settlement, cannot be followed into the hands of the Court by the beneficiaries under the latter settlement : *Thorndike v. Hunt*, 3 D. & J. 564.

Following against trustee in bankruptcy.

The rules as to following trust funds in the hands of a defaulting trustee apply against his trustee in bankruptcy as fully as against the trustee himself ; and the circumstance that the trust fund was acquired on the eve of bankruptcy, and when the bankrupt was about to abscond with it as well as with money of his own, gives no equity to the creditors as against the *cestuis que trust* : *Frith v. Cartland*, 2 H. & M. 417.

### *Following Trust Money into Land.*

Following land purchased by trustees.

If the trust money have been invested by the trustee in the purchase of land it may be followed by the *cestuis que trust* into the land ; and whatever doubts may have been formerly entertained on the subject, a claim of this sort may be supported by parol evidence : *Lane v. Dighton*, Amb. 409 ; *Lench v. Lench*, 10 Ves. 511 ; *Hopper v. Conyers*, 2 Eq. 549.

By tenant for life of trust funds.

The land may be made subject to the requirements of the trusts in the hands of the tenant for life, who pays for it in part with trust moneys directed to be re-invested in land, and procures a conveyance of it to himself instead of, as in a case where the amount so paid out of trust funds was clearly ascertainable, to the trustees : *Price v. Blake-more*, 6 Bea. 507.

Lien.

In such a case the Court declares a lien on the purchased

lands to the extent of the trust moneys traced into it: *Ibid.*; *Hopper v. Conyers*, 2 Eq. 549.

Where a man is under an obligation to lay out £30,000 in lands, and he lays out part as he can find purchases, which are attended with all material circumstances, it is more natural to suppose these purchases made with regard to the obligation than without it; more natural to ascribe it to the obligation he lies under than to a voluntary act independent of the obligation: *Lechmere v. Lechmere*, Ca. t. Talb. For. 80; Sugd. V. & P., App. I., 1117, 11th ed. Thus, if there are no facts proved which show that the purchases were made for any other purpose, the trusts will attach to the land: *Lewis v. Madocks*, 8 Ves. 150; *Mathias v. Mathias*, 3 Sm. & G. 552.

A tenant for life taking a conveyance in fee to himself of lands so purchased, without any subsequent declaration of trust or settlement, does not interfere with the rights of remaindermen: *Deacon v. Smith*, 3 Atk. 323, 326; *Mathias v. Mathias*, *supra*.

Even if the investment made by the trustee was unauthorised yet the *cestuis que trust* are entitled to the benefit of it: *Phayre v. Peree*, 3 Dow. 116.

Unauthorised purchase.

The very strongest evidence is required to found a presumption against a personal purchase by the trustee from the fact of his poverty: *Lench v. Lench*, 10 Ves. 511; *Wilkins v. Stevens*. 1 Y. & C. C. C. 431.

Poverty.

But unless there is a ground of presumption, it does not follow that a purchase even by a trustee for purchase is made in execution of his trust: *Perry v. Phelps*, 4 Ves. 116.

When purchase presumed under trust.

Such a presumption may arise where the money laid out is very nearly identical with the fund subject to the trust: *Ibid.*; and see *Sowden v. Sowden*, 1 B. C. C. 581; *Tubbs v. Broadwood*, 2 R. & My. 487.

But "the mere fact that [the trustee] had trust money in his hands when he made the purchases is not sufficient to attach the trusts on the lands bought with his own money:" *per* M. R. of Ireland in *Sealy v. Stawell*, I. R. 2 Eq. 347.

## CHAPTER XL.

### THE ENFORCEMENT OF TRUSTS AS AFFECTED BY STATUTES OF LIMITATION, DELAY, AND ACQUIESCENCE.

Express trusts not barred until purchase for value :  
3 & 4 Will. 4, c. 27, s. 25.

“ WHERE any land or rent shall be vested in a trustee upon any express trust, the right of the *cestui que trust*, or any person claiming through him, to recover such land or rent shall be deemed to have first accrued, according to the meaning of this Act, at and not before the time at which such land or rent shall have been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser, and any person claiming through him :” 3 & 4 Will. 4, c. 27, s. 25. Except so far as regards express trusts for securing any sum of money or legacy (see *infra*, p. 312), this section is unaffected by the Real Property Limitation Act, 1874.

No claim against trustee barred :  
Judicature Act, 1873, s. 25 (2).

By the Judicature Act, 1873, it is enacted that “ no claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations :” 36 & 37 Vict., c. 66, s. 25, sub.-s. 2.

What are express trusts.

It is to be remembered that the 25th section of 3 & 4 Will. 4, c. 27 (cited above), “ is confined to *express* trusts ; that is, trusts expressly declared by a deed, will, or some other written instrument ; it does not mean a trust that is to be made out by circumstances—the trustee must be appointed by some written instrument ; and the effect is, that a person, who is under some instrument an express trustee, or who derives title under such a trustee, is pre-



cluded, however long soever he may have been in enjoyment of the property, from setting up the Statute : ” *per Kindersley, V.-C., in Petre v. Petre, 1 Drew. 393 ; and see Salter v. Cavanagh, 1 Dr. & Walsh, 668 ; Yardley v. Holland, 20 Eq. 428.*

The section is confined to the case of a claim by *cestuis que trust* against express trustees ; and it has no application where the contest is between the *cestuis que trust* and third persons, not being express trustees : *Petre v. Petre, supra.*

S. 25 applies only between trustee and *cestui que trust.*

Nor does it apply where the trustee is only a constructive trustee : that is, “ if a person has been in possession, not being a trustee under some instrument, but still being in under such circumstances that the Court, on the principles of equity, would hold him a trustee, then the 25th section does not apply ; and if the possession of such constructive trustee has continued for more than 20 years, he may set up the Statute against the party who, but for lapse of time, would be the right owner : ” *Ibid.*

Not to constructive trusts.

As the section applies so long as no purchase for value without notice can be set up against the claim of the *cestui que trust*, no time will bar him while the estate is in the trustee, or in some one claiming through him : *Salter v. Cavanagh, 1 Dr. & Wal. 668 : Attorney-General v. Flint, 4 Hare, 147 ; Sturgis v. Morse, 3 D. & J. 1.*

Applies to trustee and persons claiming through him.

A trust estate omitted from the account of a bankrupt, and coming by conveyance from the trustee under the will to the assignee under a second bankruptcy, was held to have remained in the hands of the latter as an express trustee, affected by the trusts of the will, and thus to be subject to the claims of the former creditors, notwithstanding the Statute : *Sturgis v. Morse, 3 D. & J. 1 ; see Blair v. Nugent, 3 J. & L. 660 ; Lawton v. Ford, 2 Eq. 97.*

Trusts in person claiming through trustee.

When an executor has assented to a legacy bequeathed to him upon trusts, and has set apart the legacy accordingly, he is a trustee to all intents and purposes, and cannot set up the Statute : *Phillipo v. Munnings, 2 M. & Cr. 309 ;*

When executor upon trust an express trustee.

*O'Reilly v. Walsh*, I. R. 6 Eq. 555; *Thomson v. Eastwood*, L. R. 2 App. Ca. 215.

Where  
legacy not  
set apart.

But if the legacy has not been set apart as a trust fund, a will by the surviving executor, or by both executors, creating a trust for the payment of their debts, will not prevent the lapse of time from barring the legatee: *Phillipo v. Munnings*, *supra*; *Harcourt v. White*, 28 Bea. 303, 309.

Effect of  
laches of  
legatee.

But where the legatee or his representative has allowed a very long time to elapse without attempting to enforce the trust, equity will, when enforcing it, apply, as to interest on the legacy, the principle of the Statute, and allow interest for six years before action brought: *Thomson v. Eastwood*, *supra*.

Trust to  
pay debts  
and lega-  
cies.

A devisee of land charged with debts and legacies, devising it on trust for sale for the payment, out of the rents, of his testator's debts and legacies, creates an express trust which will not be barred by the Statute: *Watson v. Saul*, 1 Giff. 188.

Express  
trust for  
indefinite  
claimants  
on pen-  
sion fund.

A fund established for granting pensions to certain members of the Civil Service in India was vested in persons appointed to manage it, and who were called the "trustees of the Fund." It was held that these persons were not mere trustees for the association, but express trustees, and that the members of the Fund were *cestuis que trust*, against whom the Statute did not run: *Edwards v. Warden*, L. R. 1 App. Ca. 281; and see *Cater v. Croydon Canal Co.*, 4 Y. & C. 405.

Express  
trust for  
sale.

An express trust for sale was held to be enforceable after 50 years, at the instance of persons entitled to the proceeds: *Mutlow v. Bigg*, 18 Eq. 246, following *Gough v. Bult*, 16 Sim. 323, and *Burrowes v. Gore*, 6 H. L. C. 907; but on appeal it appearing that the legatees had elected to take the land in satisfaction, a reconversion was held to have been caused, and the right accordingly to be barred, 1 Ch. D. 385; and see *Roberts v. Gordon*, 6 Ch. D. 531.

Covenant  
to settle.

A covenant to assign and settle a sum of money simply,

is a mere legal obligation which is barred by the Statute in the ordinary way; but a covenant by a trustee, after a recital of the payment of a sum of money (which however had not been paid), to invest it in the joint names of himself and the settlor, constitutes the settlor also a trustee of the covenant, against the due performance of which the Statute has no effect; *Stone v. Stone*, 5 Ch. 74; and see *Spickernell v. Hotham*, Kay, 673.

The relation of trustee and *cestui que trust* does not arise so as to prevent time from running, by the mere receipt and payment of money by a solicitor for his client: *Re Hindmarsh*, 1 Dr. & Sm. 129; *Watson v. Woodman*, 20 Eq. 721. Solicitor and client.

But an agent who held a power of attorney to sell and invest in the name of his principal was held to stand in a fiduciary position, and therefore unable to set up the Statute: *Burdick v. Garrick*, 5 Ch. 233; and see *Sheldon v. Weldman*, 1 Ca. in Ch. 26; *Heath v. Henly*, *Ibid.* 20; *Teed v. Beere*, 5 Jur. N. S. 381. Agent.

Bankers are not in a fiduciary relation to their customers: *Foley v. Hill*, 2 H. L. C. 28; see *ante*, p. 302. Bankers.

A deed appointing receivers to pay rents to certain annuitants may constitute an express trust by making the annuitants *cestuis que trust* under it: *Knight v. Bowyer*, 2 D. & J. 421. Receiver by deed.

Where, upon the dissolution of a friendly society, a trust was declared for the benefit of creditors, a debt contracted twenty years before was held not to be barred: *Pare v. Clegg*, 29 Bea. 589. As to the effect of trusts for creditors upon statute-barred debts, see *ante*, p. 39. Express trust for past creditors.

A tenant for life of renewable leaseholds taking a renewal to himself is not an express trustee upon the trusts of the settlement: *Re Dane*, I. R. 5 Eq. 498. Tenant for life renewing to himself.

Nor is a remainderman of renewable leaseholds who enters into possession an express trustee of a fee farm grant to himself: *Ibid.* Remainderman taking fee farm grant.

A trustee *de son tort*, usurping the execution of an Trustee de son tort.

express trust, will be deemed to be an express trustee : *Quinton v. Frith*, 1 R. 2 Eq. 416.

Trustee  
acting  
though not  
bound to  
act.

A person to whom trust estates do not pass, owing to a charge of legacies by the will, but acting in the trusts, is by such conduct an express trustee, so that a claim against him will not be barred by the Statute : *Life Association v. Siddal*, 3 D. F. & J. 58, 72.

Executor  
acting in  
self-im-  
posed  
trust.

Where an executor had taken upon himself the duty of managing the testator's business he was held not to have been an express trustee, but only a constructive trustee, as to whom it was said that there is a time beyond which the Court will not enter into an inquiry upon a case of controverted facts for the purpose of raising and giving effect to a trust by mere implication : *Portlock v. Gardner*, 1 Ha. 594, 607.

No express  
trust for  
unpaid  
vendor.

The common lien of the vendor for unpaid purchase-money does not constitute the purchaser an express trustee for him under the Statute : *Toft v. Stephenson*, 7 Ha. 1 ; 1 D. M. & G. 28.

Mortgage  
with trust  
for sale no  
express  
trust.

A common mortgage security taken by way of trust for sale is nothing more than a mortgage, and there is under it no express trust which keeps out any Statute of Limitation : *Locking v. Parker*, 8 Ch. 30, 39.

Though  
taken in  
name of  
trustee.  
Trust of  
surplus.

And the fact that the security is taken in the name of a trustee for the mortgagee makes no difference : *Ibid.*

The ultimate express trust of the sale-moneys would keep alive the mortgagor's right to any surplus ; but there must be an allegation that such surplus exists, in order to enforce any such right : *Ibid.*, at p. 40.

Mortgagee  
when trust-  
tee under  
power of  
sale.

But a mortgagee has been considered, with regard to the exercise of his power of sale, to be a trustee for the mortgagor (*Downes v. Grazebrook*, 3 Mer. 200 ; *Chambers v. Goldwin*, 9 Ves. 271 ; *Cholmondeley v. Clinton*, 2 J. & W. 190), at least to the extent of a fraudulent exercise of the power in order to get the estate into his own hands—a device which after a great length of time will not be supported : *Robertson v. Norris*, 1 Giff. 421.

Fraud.

Guardian  
and ward.

The relation of guardian and ward is strictly that of

trustee and *cestui que trust* (*Beaufort v. Berty*, 1 P. W. 704; *Mellish v. Mellish*, 1 S. & S. 145); and a period of nine or ten years is no bar to an account against a guardian on the ground of stale demand; *Mathew v. Brise*, 14 Bea. 341; but see *Lockey v. Lockey*, Pr. Ch. 518.

And where any person enters upon the property of an infant, whether the infant has been actually in possession or not, such person will be fixed with a trust as to the infant, and be bound to account as a bailiff or trustee:

Person entering on infant's land.

(1) Whenever he is the natural guardian of the infant: *Thomas v. Thomas*, 2 K. & J. 79; *Quinton v. Frith*, 1 R. 2 Eq. 414.

(2) Whenever he is so connected by relationship or otherwise with the infant as to impose upon him a duty to protect, or at least not to prejudice his rights: *Nanney v. Williams*, 22 Bea. 452; *Pelly v. Bascombe*, 4 Giff. 390, on app. 34 L. J. Ch. 233; *Quinton v. Frith*, *supra*.

(3) Whenever he takes possession with knowledge or express notice of the infant's rights: *Blomfield v. Eyre*, 8 Bea. 250; *Quinton v. Frith*, *supra*; but see *Hagley v. West*, 3 L. J. Ch. 63; *Crowther v. Crowther*, 23 Bea. 305.

Charities are trusts, and as such are within the exception of s. 25: *Commissioners of Charitable Donations v. Wybrants*, 2 J. & L. 182; *Attorney-General v. Christ's Hospital*, 3 M. & K. 344; *Magdalen College v. Attorney-General*, 6 H. L. C. 189.

Charities within s. 25.

A charge of debts on real estate in case of a deficiency of personalty, with a direction to raise the money by mortgage, is a mere charge with a collateral authority given to executors to raise the money, and is not as such an express trust within the words of the statute: *Dickenson v. Teasdale*, 1 D. J. & Sm. 52. So also a charge of an annuity, or of legacies, creates no express trust: *Francis v. Grover*, 5 Ha. 39; *Proud v. Proud*, 32 Bea. 234; and see *Burrowes v. Gore*, 6 H. L. C. 961, *per* Lord St. Leonards.

Charge of debts.

Legacies.

*Charges and Trusts to pay Money or Legacies.*

Express  
trust to  
pay money  
or legacies  
barred by  
new Limi-  
tation  
Act.

By s. 10 of the Real Property Limitation Act, 1874 (which will come into force on the 1st January, 1879), it is enacted that "after the commencement of this Act no action, suit, or other proceeding shall be brought to recover any *sum of money* or *legacy* charged upon or payable out of any land or rent, at law or in equity, and secured by an *express trust*, or to recover any arrears of rent, or of interest in respect of any sum of money or legacy so charged, or payable, and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust:" 37 & 38 Vict. c. 57.

A trustee, under an express trust, of money, or of a legacy charged on land, will therefore under this section be entitled to the benefit of s. 8 of the same Act, by which it is enacted that money charged on land at law or in equity, or any legacy, shall be deemed to have been satisfied after twelve years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto, or his agent; and in such case within twelve years after such payment or acknowledgment.

*Bar of Equitable Claims.*

Bar of  
equitable  
claims.

By the 24th section of the Act of 3 & 4 Will. 4, c. 27, no person claiming any land or rent in equity may bring any suit to recover the same but within the period during which he might, under the Act, have made an entry or distress, or brought an action to recover the same respectively, if he had been entitled at law to such estate interest, or right in or to the same as he may claim therein

in equity,—thus barring equitable claims to the extent that they would have been barred if legal: *Archbold v. Scully*, 9 H. L. C. 360; *Spickernell v. Hotham*, Kay, 669.

With regard to equitable and legal claims against tenants for life for waste, see *Leeds v. Amherst*, 2 Ph. 117; *Harcourt v. White*, 28 Bea. 303; *Seagram v. Knight*, 2 Ch. 628; *Higginbotham v. Hawkins*, 7 Ch. 676; *Birch-Wolfe v. Birch*, 9 Eq. 683.

Though trusts are excepted from the operation of the Statutes of Limitations, the rule holds good only between trustees and *cestuis que trust*; and though a trustee cannot set up the Statute against his *cestuis que trust*, a mere trustee by implication, and as such affected by an equity, can be proceeded against only within a reasonable time, for both Courts of Law and of Equity preserve an analogy to the Statutes of Limitations: *Townshend v. Townshend*, 1 B. C. C. 551; *Bonney v. Ridgard*, 1 Cox, 145; *Andrew v. Wrigley*, 4 B. C. C. 125; *Beckford v. Wade*, 17 Ves. 87, 96; *Chalmer v. Bradley*, 1 J. & W. 51; *Clanricarde v. Henning*, 30 Bea. 175; *Gresley v. Mousley*, 4 D. & J. 78, 95; *Lyddon v. Moss*, 4 D. & J. 104; and in *Hovenden v. Lord Annesley* (2 Sch. & L. 630), Lord Redesdale says that “the Statute of Limitations, applying itself to certain legal remedies, for recovering the possession of lands, for recovering of debts, &c., equity, which in all cases follows the law, acts on legal titles, and legal demands, according to matters of conscience which arise, and which do not admit of the ordinary legal remedies: nevertheless, in thus administering justice, according to the means afforded by a Court of Equity, it follows the law: and see *Salter v. Cavanagh*, 1 Dr. & Walsh. 668; and *per* Lord Westbury in *Knox v. Gye*, L. R. 5 H. L. 674.

Thus wherever the legislature has limited a period for proceedings at law, equity will in analogous cases consider the equitable rights as bound by the same limitation: *Hovenden v. Annesley*, 2 Sch. & L. 632; *Penny v. Allen*, 7 D. M. & G. 426; *Story v. Gape*, 2 Jur. N. S. 706.

Waste.

Trusts by implication barred by laches.

Analogy to statutory bar.

Effect of  
s. 24.

The doctrine thus propounded and acted upon before the Statute must now be taken to be incorporated in the 24th section ; and thus it is said that the discretion of the Court in applying the doctrine is removed, and has become a statutory duty : *Berrington v. Evans*, 1 Y. & C. 434 ; and see Sugden, Essay of the Real Property Statutes, p. 99.

Executor  
of trustee  
liable for  
breach of  
trust.

The analogy of the Statute of Limitations cannot be set up by an executor in answer to a claim founded on a breach of trust by his testator ; and Courts of Equity are not, in dealing with equitable debts, bound by the Statute of 21 Jac. I, c. 16, providing a six years' limitation to a simple contract debt, or a twenty years' limitation to a specialty debt, of a testator : *Baker v. Martin*, 5 Sim. 380 ; *Story v. Gape*, 2 Jur. N. S. 706 ; *Obee v. Bishop*, 1 D. F. & J. 137 ; *Brittlebank v. Goodwin*, 5 Eq. 555, in which *Dunne v. Doran*, 13 I. Eq. R. 545, and *Brereton v. Hutchinson*, 2 I. Ch. R. 648, 3 I. Ch. R. 361, *contra*, were disapproved and not followed. *Newport v. Bryan*, 5 I. Ch. R. 119, is to the same effect as the other Irish cases.

The liability of the executor, or devisee of a testator, or the administrator or heir of an intestate, does not depend on any new *assumpsit*, but originates from, and depends entirely on, the liability of the testator or intestate, and a demand founded on such a liability for a breach of trust or misappropriation committed by him is not barred by the lapse of six years after his death : *Obee v. Bishop*, *supra* ; *Brittlebank v. Goodwin*, 5 Eq. 553.

Term re-  
maining in  
trustees.

Where there is a trust, whether for raising portions or annuities, and the legal estate remains undisturbed in the trustees, the parties who have that estate may immediately recover possession, and the *cestui que trust's* right is saved by the 25th section : *Young v. Lord Waterpark*, 15 L. J. Ch. 63 ; *Cox v. Dolman*, 2 D. M. & G. 592 ; compare *Hickman v. Upsall*, 2 Ch. D. 617, reversed 4 Ch. D. 144.

Possession  
of *cestui  
que trust*

If the *cestui que trust* is in possession, though his relation to the trustee may at law be that of tenant at will,



the trustee's estate is not destroyed by mere lapse of time : not adverse to trustee.  
*Garrard v. Tuck*, 8 C. B. 231.

But where the *cestui que trust* would be barred if his title were legal, his trustee is also barred : *Melling v. Leak*, 16 C. B. 652 ; *Drummond v. Sant*, L. R. 6 Q. B. 763 ; and see *Spickernell v. Hotham*, Kay, 669. Trustee barred if *cestui que trust* barred.

The possession of one *cestui que trust* cannot bar the title of his co-*cestuis que trust* and the trustees : *Melling v. Leak*, *supra* ; *Lister v. Pickford*, 34 Bea. 576 ; see *Burroughs v. M'Creight*, 1 J. & L. 290. Possession of *cestuis que trust* *inter se* not adverse.

A trustee who is in possession of land, is so on behalf of his *cestuis que trust*, and his making a mistake as to the persons who are really his *cestuis que trust* cannot affect the question : *Lister v. Pickford*, 34 Bea. 576. Mistake as to who are *cestuis que trust*.

The *cestui que trust* is barred if the trustee is barred by adverse possession : *Lewellin v. Mackworth*, 2 Eq. Ca. Ab. 579 ; *Hovenden v. Annesley*, 2 Sch. & L. 629 ; Lewin, p. 708, where he points out, however, that if "the *cestui que trust* would, if his title were legal, have more than the ordinary time to sue (as where he is under disability or entitled in remainder only), he will be allowed the same extended period for suing in equity, notwithstanding that the trustee may be barred." Mr. Lewin further observes that "where the subject-matter of the trust is a personal debt, it seems difficult to avoid the conclusion that where the trustee is barred the *cestui que trust* is barred also," and that "the proper remedy of the *cestui que trust* is to proceed at law in the name of the trustee," and further, "that the same result would seem to follow where the subject-matter of the trust is *land*, and the possession has been held adversely to both the trustee and *cestui que trust*, without any species of privity, as when the trustee is disseised . . . . The proper course for the *cestui que trust* is to bring [an action for recovery of the land] in the name of the trustee ;" and see *Burrowes v. Gore*, 6 H. L. C. 940 ; Darby and Bosanquet on Statutes of Limitations, p. 186. *Cestui que trust* barred if trustee barred.

An acknowledgment by trustees for payment of debts Acknowledgment

keeps a debt alive against all parties beneficially interested in the estate : *St. John v. Boughton*, 9 Sim. 219 ; *Toft v. Stephenson*, 1 D. M. & G. 28.

by one  
trustee.

An acknowledgment by one trustee does not prevent his co-trustee from setting up the Statute : *Dickenson v. Teasdale*, 1 D. J. & Sm. 52.

Action  
keeps right  
alive.

Under the new practice of the Chancery Division the right of a *cestui que trust* would probably, by analogy to the former practice, which saved the right by the filing of a bill, be saved by the issue of a writ in an action before, though it might not have been served until just after, the expiration of the statutory period of limitation : see *Coppin v. Gray*, 1 Y. & C. C. C. 205 ; *Purcell v. Blennerhassett*, 3 J. & L. 24 ; *Byron v. Cooper*, 11 Cl. & F. 556.

Demurrer.

Inasmuch as the Statute of Limitations does not merely bar the right to recover land, but takes away the title to the land, it may be raised by demurrer : *Dawkins v. Penrhyn*, 6 Ch. D. 319.

### *Delay and Acquiescence.—Stale Demands.*

It is provided by s. 27 of the Statute of Limitations of 2 & 3 Will. 4, c. 27 (which section is not repealed by the Real Property Limitation Act, 1874), that nothing in the former Act contained shall be deemed to interfere with any rule or jurisdiction of Courts of Equity in refusing relief on the ground of acquiescence or otherwise, to any person whose right to bring a suit may not be barred by virtue of that Act.

Presump-  
tion from  
delay.

After a great length of time, and in the absence of all explanation accounting for the delay in asserting the claim, every presumption, including that of actual payment, must be made in favour of the person originally bound to pay : *Pickering v. Stamford*, 2 Ves. Jun. 283 ; *Pattison v. Hawkesworth*, 10 Bea. 375.

But where there is a statutory bar, mere length of time, short of the period fixed by the Statute, and unaccompanied by any other circumstances, is not of itself a suffi-

cient ground to presume a release or extinguishment of a right : *Eldridge v. Knott*, Cowp. 214.

Where *cestui que trust*, knowing their rights, see the estate in the possession of others, and improving at their expense, lie by and make no claim for many years, the Court would be bound to presume a release or waiver or an agreement that it should be enjoyed as it has been : *Chalmer v. Bradley*, 1 J. & W. 51, 65. Standing by.

Calling for accounts is always much discouraged after the death of the accounting party, if he have lived long enough to have accounted in his lifetime. Therefore, where a *cestui que trust* has lain by after his majority for a long period (*e.g.*, 19 years), the relief will not be granted in the absence of very special circumstances : *Chalmer v. Bradley*, 1 J. & W. 51, 62 ; *Huet v. Fletcher*, 1 Atk. 467 ; *Gregory v. Gregory*, G. Coop. 201 ; *Campbell v. Walker*, 5 Ves. 678 ; *Hercy v. Dinwoody*, 2 Ves. Jun. 87 ; *Parkes v. White*, 11 Ves. 226 ; *Blair v. Ormond*, 1 De G. & Sm. 428 ; *Payne v. Evens*, 18 Eq. 356 ; and see *ante*, pp. 194, 195. Claim for account after death of accounting party.

So in the case of gross laches on the part of the *cestui que trust*, even under an express trust, a Court of Equity will not allow a dormant claim to be set up when the means of resisting it, if unfounded, have perished, and would therefore not cast a burden of proving such an affirmative as that forty years ago cottage rents were properly collected, when the witnesses who might have proved the fact have long ago been dead : *Bright v. Legerton*, 2 D. F. & J. 606, 617. Claim after means of resistance destroyed.

In such cases the very forbearance to make the demand affords a presumption that the claimant is conscious it was satisfied, or that he intended to relinquish it : *Pickering v. Stamford*, 2 Ves. Jun. 332 ; for length of time, where it does not operate as a statutory or positive bar, operates simply as evidence of assent or acquiescence : *Life Association v. Siddal*, 3 D. F. & J. 58, 72. Presumption of assent.

But although the rule is that the onus lies on the party relying on acquiescence to prove the facts from which the Burden of proof.

consent of the *cestui que trust* is to be inferred, there may be cases in which, from great lapse of time, such facts might be and ought to be presumed: *Life Association v. Siddal*, 3 D. F. & J. 77.

Common mistake.

In the case of common mistake between the trustee and the *cestui que trust* the latter is not barred by acquiescence; *Randall v. Errington*, 10 Ves. 428; *Morse v. Royal*, 12 Ves. 355.

Admission of correctness of old accounts.

If an account has been kept by the trustee of old transactions, the *cestui que trust* after a long time coming for relief against him must admit its correctness, or take upon himself the burden of proving its inaccuracy; *Chalmer v. Bradley*, 1 J. & W. 51, 65; *Portlock v. Gardner*, 1 Hare, 594.

Costs where no accounts kept.

But though the Court will not, after a long lapse of time, direct trustees to account for a trust fund which the facts show has been duly distributed, it being the duty of the trustees to preserve evidence of that distribution, the Court will not give the trustees their costs if they have neglected so to do: *Payne v. Evens*, 18 Eq. 356, 367.

Where there are open and continuing accounts, no time runs.

Where the relation of trustee and *cestui que trust* has continued—the transactions between them not closed, and the delay of the claim attributable to the trustee not having given that information to his *cestui que trust* to which he was entitled, and accounted with him, as the Court is of opinion he ought to have done,—no time will preclude an account from the commencement of the trust: *Wedderburn v. Wedderburn*, 4 M. & Cr. 41, 53.

*Cestui que trust* not barred if ignorant of rights.

Acquiescence imports knowledge; for a *cestui que trust* cannot be bound by acquiescence unless he has been fully informed of his rights and of all the material facts and circumstances of the case: *Cholmondeley v. Clinton*, 2 Mer. 362; *Marker v. Marker*, 9 Ha. 16; *Life Association v. Siddal*, 3 D. F. & J. 74; *Farrant v. Blanchford*, 1 D. J. & Sm. 119.

Slight delay after notice.

It is not necessarily a case of acquiescence by a *cestui que trust* who knows that the trustees have committed a breach of trust, if he nevertheless does not come imme-

diately to complain of it, provided he has not connived at or received any benefit from the breach of trust: *Phillipson v. Gatty*, 7 Ha. 516; *Hanchett v. Briscoe*, 22 Bea. 496.

This might be otherwise if he stood by and permitted another *cestui que trust* to misrepresent his interests, in order to induce the trustees to commit the breach of trust: *Evans v. Bicknell*, 6 Ves. 174; and see *Phillipson v. Gatty*, *supra*.

As to the extent to which acquiescence will bind the representative of a deceased partner who delays the assertion of his rights to participate in the advantage of renewals of leases by the continuing partners, see *ante*, pp. 76, 77.

Acquiescence by executor of deceased partner.

And it is to be observed that greater indulgence is to be allowed to a body of persons, *e.g.*, creditors, in asserting their rights, than to an individual, see *ante*, p. 195.

Creditors.

The rules upon the subject of stale demands which apply to ordinary cases, if they apply at all, do not apply with equal force to cases of express trusts. They are counter-vailed by the express duty incumbent upon the trustee to apply the trust funds according to the trusts; but the Court will modify the account against trustees where there has been a delay or acquiescence on the part of the *cestui que trust*, and perhaps presume a release or abandonment of the right by the *cestui que trust*: *Knight v. Bowyer*, 2 D. & J. 421, 443.

Stale demands against express trustees.

A *cestui que trust* under an express trust, whose interest is reversionary, is not bound to assert his title until it comes into possession (as to which see s. 5 of the Act of 2 & 3 Will. 4, c. 27, which will be replaced by s. 2 of the Real Property Limitation Act, 1874); but the mere circumstance that he is not bound to assert his title does not bear upon the question of his assent to a breach of trust; he is not less capable of giving such assent when his interest is in reversion than when it is in possession; whether he has done so is a question to be determined on the facts of each particular case: *Life Association v.*

Where interest is reversionary.

*Siddal*, 3 D. F. & J. 58, 73 ; compare *Thompson v. Simpson*, 1 Dr. & War. 459, 489 ; *Roberts v. Tunstall*, 4 Hare, 257, 265 ; *Mehrtens v. Andrews*, 3 Bea. 72, 76 ; *Browne v. Cross*, 14 Bea. 105 ; *Lewis v. Rees*, 3 K. & J. 132.

But where the trust is definite, a clear breach of trust cannot be held to have been sanctioned or concurred in by the mere knowledge and non-interference on the part of the *cestui que trust* before his interest has come into possession : *Life Association v. Siddal*, *supra* ; see *March v. Russell*, 3 M. & Cr. 31.

Thus, where the interest was contingent on failure of issue of a tenant for life, time was held not to have run against the remainderman until after the death of the tenant for life : *Butler v. Carter*, 5 Eq. 276.

Where an expectant tenant for life in remainder sees a tenant for life in possession cut timber, and not only takes no step to prevent it during his life, but does not for nearly twenty years after his death seek to make his estate liable for those acts, a Court of Equity will not afford relief to the tenant for life in remainder : *Harcourt v. White*, 28 Bea. 303, 308.

Poverty.

Relief will not be granted to a person who has slept upon his rights for an unreasonable length of time, though he allege that the fraud in question has left him in distressed circumstances : *Hovenden v. Annesley*, 2 Sch. & L. 639.

And where the equity to rescind a transaction depends wholly upon the nature of the transaction, as a sale of a reversionary interest (no misrepresentation, concealment, or ignorance of facts being relied upon), the sole fact of the poverty of the claimant is not enough to prevent time from running against the presumption of his acquiescence : *Roberts v. Tunstall*, 4 Hare, 257, 269.

### *Fraud.*

Fraud :  
s. 26.

In every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land or rent of which he, or any person through whom he

claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud shall or with reasonable diligence might have been first known or discovered; provided that nothing in this clause contained shall enable any owner of lands or rents to have a suit in equity for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents on account of fraud against any *bond fide* purchaser for valuable consideration who has not assisted in the commission of such fraud, and who at the time that he made the purchase did not know and had no reason to believe that any such fraud had been committed: 3 & 4 Wm. 4, c. 27, s. 26, which section is not affected by the Real Property Limitation Act, 1874.

The principle of this enactment was that of the Court of Chancery, under which, if a trustee is in possession and does not execute his trust, the possession of the trustee is the possession of the *cestui que trust*; and if the only circumstance is, that he does not perform his trust, his possession operates nothing as a bar, because his possession is according to his title; but where a person who is in possession by fraud, is not in the ordinary sense of the word a trustee, but is to be constituted a trustee by a decree of a court of equity founded on fraud, his possession in the meantime is adverse to the title of the person who impeaches the transaction on the ground of fraud, and time will run from the time when the circumstances of the fraud were discovered: *Hovenden v. Annesley*, 2 Sch. & Lef. 633.

In a case in which the *cestui que trust* alleged, after forty years, that he had only lately discovered that the trustee had kept the estate as his own, stating that he had paid the testator's debts, inquiries were directed whether the *cestui que trust* had notice of the facts, whether he had released, and as to the value of the estate as compared with the debts: *Chalmer v. Bradley*, 1 J. & W. 51.

Inquiries as to when fraud discovered.

But this relief will be much curtailed in a case where

Y

Case of suspicion only.

the plaintiff's case rests upon suspicion and is not clearly made out, and is submitted to the Court after an unreasonably long delay : *Pennell v. Home*, 3 Drew. 337.

Fraudulent concealment of rights.

Time will not run against a person who has been care-fully brought up in the notion that he could not, owing to the existence of an elder legitimate brother (who, how-ever, was in fact illegitimate), come into possession, until with reasonable diligence he might have ascertained that he had been the victim of such concealed fraud : *Vane v. Vane*, 8 Ch. 383 ; and see *Chetham v. Hoare*, 9 Eq. 571.

Receiver of trust property is a trustee.

The remedy given against a person who receives trust property with knowledge of a breach of trust is founded on fraud, and the right of the party defrauded is therefore not affected by lapse of time, or, generally speaking, by anything done or omitted to be done, so long as he re-mains, without any fault of his own, in ignorance of the fraud that has been committed : *Rolfe v. Gregory*, 4 D. J. & Sm. 576 ; see *Charter v. Trevelyan*, 11 Cl. & F. 714 ; *Pyrah v. Woodcock*, 24 L. T. N. S. 407 ; *Lewis v. Thomas*, 3 Hare, 26.

Borrower of trust-money.

If the person receiving the money takes it as a loan, his conscience is still affected with the trust, and he cannot separate the loan from the trust and insist that the loan, being barred by the statute, the trust is barred also : *Ernest v. Croysdill*, 2 D. F. & J. 175, 198.

*Particeps criminis.*

Where a trustee has also a beneficial interest in re-mainder contingent on the failure of issue of a tenant for life, although children might have made him liable for a misappropriation of the funds, the husband of the tenant for life, having been guilty of such misappropriation, was held not to be able to set up the Statute against the trustee in the absence of circumstances showing knowledge in, and acquiescence by, the latter : *Butler v. Carter*, 5 Eq. 276.

Want of intellect no excuse.

The Court will not relieve a man from the consequences of concealed fraud practised by another on the ground that his intellect was dull, and that he had therefore failed to discover the fraud ; actual lunacy would, however, be a sufficient excuse : *Manby v. Bewicke*, 3 K. & J. 369.



*Account of Rents and Profits.*

Where there is a trust and a mere equitable title, the Court will give the *cestui que trust* an account of the rents and profits from the time the title accrued, unless upon special circumstances; and then will, in its discretion, restrict it to the time of bringing the action: *Dormer v. Fortescue*, 3 Atk. 124, 130; *Hicks v. Sallitt*, 3 D. M. & G. 782; *Morgan v. Morgan*, 10 Eq. 99; *Hickman v. Upsall*, 4 Ch. D. 144; *Thomson v. Eastwood*, L. R. 2 App. Ca. 216, 241.

Limit of account.

Such special circumstances include the case of the defendant having no notice of the plaintiff's title, nor having had the deeds and writings showing the plaintiff's title in his custody, and also the case of the title of the plaintiff appearing by deeds in a stranger's custody: *Dormer v. Fortescue*, 3 Atk. 124.

Special circumstances.

Delay will also have the effect of restricting the account to the date of bringing the action: *Dormer v. Fortescue*, 3 Atk. 124; *Pettiward v. Prescott*, 7 Ves. 541; *Bowes v. East London Waterworks Co.*, 3 Madd. 375; *Hicks v. Sallitt*, 3 D. M. & G. 782; *Sturgis v. Morse*, 3 D. & J. 1; *Wright v. Chard*, 4 Dr. 673; *Thomson v. Eastwood*, L. R. 2 App. Ca. 216, 241.

Delay.

In the case of an infant bringing an action to have possession of the estate, and an account of mesne profits, the account will be decreed from the time when the infant's title accrued: *Dormer v. Fortescue*, 3 Atk. 124; *Blomfield v. Eyre*, 8 Bea. 250; *Nanney v. Williams*, 22 Bea. 452; *Schroder v. Schroder*, Kay, 591; *Hicks v. Sallitt*, 3 D. M. & G. 782, 812; *Pascoe v. Swan*, 27 Bea. 508.

Profits of infant's land.

The right to call for an account will be available against the representatives of the person who has been wrongfully in possession: *Monypenny v. Bristow*, 2 R. & M. 135; *Woodhouse v. Woodhouse*, 8 Eq. 514; so also where the possession had been taken under a mistake of law; *Gardiner v. Fell*, 1 J. & W. 22.

Mesne profits against representative.

Mistake of law.

## CHAPTER XLI.

### SPECIFIC RELIEF FOR BREACH OF TRUST—JOINT AND SEVERAL LIABILITY—EFFECT OF CONCURRENCE AND ACQUIESCENCE.

IN the foregoing chapters numerous instances of breach of trust are noticed, together with the appropriate remedies in some of such cases—remedies which necessarily vary according to the particular circumstances of each transaction. In the present chapter will be found some of the more salient points with regard to the decree obtainable by a *cestui que trust* against his trustee, the extent of the trustee's liability, and the effect of concurrence in, or adoption of breaches of trust, by the *cestui que trust* himself.

Unauthor-  
ised in-  
vestment.

A trustee who commits a breach of trust by investing on mortgage instead of in consols, is liable to make good the amount of stock which would have been purchased in consols, together with the amount of accumulation which would have been produced by a proper investment of the dividends in such stock : *Pride v. Fooks*, 2 Bea. 430.

Non-  
invest-  
ment.

Where an executor with a trust to invest a legacy retains it, and pays interest on it to the *cestui que trust*, he must purchase so much stock as the amount of the legacy would have bought when he first had sufficient assets in his hands to have made the investment according to the trust : *Byrchall v. Bradford*, 6 Madd. 235. See the Order, p. 241.

Non-  
invest-  
ment by  
solicitor-  
trustee.

Where trust money was sent to one of a firm of solicitors who was himself one of the trustees, for investment on mortgage, and the money after having been placed to

the credit of the firm at their bankers', was drawn out by the trustee and never invested, his partner was held to be personally liable for the money: *Eager v. Barnes*, 31 Bea. 579; the trustee having died, the debt was ordered to be proved against his estate, his partner, on payment by him, taking the benefit of such proof; and see *Long v. Hay*, W. N. 1871, 134. As to the general liability of a solicitor for the receipt of money by his partner in the ordinary course of business, see *Bourdillon v. Roche*, 27 L. J. Ch. 681, and the cases there cited; *Sawyer v. Goodwin*, 16 L. T. N. S. 514.

Trustees are liable to make good the whole loss caused by their neglect to enforce the transfer of a sum of stock forming part of the wife's property, covenanted to be settled by a marriage settlement, their default enabling the husband to obtain and misapply the fund: *Fenwick v. Greenwell*, 10 Bea. 412; *Caffrey v. Darby*, 6 Ves. 488; *Maitland v. Bateman*, cited, 10 Bea. 415.

Neglect to  
sue for  
debts.

But this may not be the case where the husband is evidently in insolvent circumstances: *Hobday v. Peters*, 28 Bea. 603.

Where  
debtor  
insolvent.

So also where a trustee whose co-trustee had been a partner with the testator, allowed him to retain and lose the estate in the trade, he was, with his co-trustee, declared liable to account personally for the loss: *Booth v. Booth*, 1 Bea. 125.

Leaving  
money in  
trade.

As to the liability of trustees who omit to get in and convert within a reasonable time, whereby a loss is caused to the trust estate, see *ante*, p. 87 *et seq.*

"If a partner, being a trustee, improperly employs the money of his *cestui que trust* in the partnership business, or in payment of the partnership debts, this alone is not sufficient to entitle the *cestui que trust* to obtain repayment of his money from the firm": Lindley, p. 311; *Exp. Apsey*, 3 B. C. C. 265.

Recovering  
money from  
firm to  
whom lent.

The knowledge of the partners who are not trustees, must be proved: *Exp. Heaton*, Buck, 386; *Exp. Barne-wall*, 6 D. M. & G. 801.

But if the trust money can be traced by the *cestui que trust* into the hands of the firm, he can claim it against them on the principles stated *ante*, p. 299 *et seq.*

If partners are implicated in a breach of trust, their liability is joint and several: *Devaynes v. Noble*, 1 Mer. 563, 614; *Imperial Mercantile Assoc. v. Coleman*, L. R. 6 H. L. 189.

When trustees lend money to a firm which becomes bankrupt, they cannot obtain an account of profits realised with the money, nor charge more than ordinary interest upon it: *Stroud v. Gwyer*, 28 Bea. 130.

Neglect to  
keep up  
policy.

Where by a marriage settlement a husband assigned a policy to trustees, and covenanted to keep it up, the trustees, not having any power or duty to keep up the policy, and not having any funds available for that purpose, were not charged with the loss arising by the husband failing to keep up the policy: *Hobday v. Peters*, 28 Bea. 603; *secus*, where there is a trust to keep up the policy: *Marriott v. Kinnersley*, Tam. 470, 474.

And "if the trustee have no funds to keep up the policy, he may do, and, in my opinion, it is his duty to do, what he can to obtain money for the purpose of paying the premium, and a lien on the policy will then be obtained because the trustee has no money applicable for the purpose, and he really does what is best for the *cestui que trust*, in obtaining money for that purpose. Therefore the *cestui que trust*, having the benefit of that advance, cannot make the trustee pay personally that of which he has received the benefit. But if the *cestui que trust* supply funds, or if the trustee, by duly performing his trust ought to be in possession of funds applicable to that purpose, then he acquires no lien on the policy, and cannot confer one on another": *Clack v. Holland*, 19 Bea. 262, *per* Lord Romilly, at p. 276.

But a mere stranger, by paying premiums on a policy, cannot acquire a lien upon it. He can only acquire a lien by some contract with the persons beneficially interested in it, or with the trustee where the trustee himself might

have obtained a lien : *Ibid.* ; *Re Layton*, W. N. 1873, 49 ; and see *Burridge v. Row*, 1 Y. & C. C. C. 183, 583 ; *Pinkett v. Wright*, 2 Hare, 120, 12 Cl. & F. 764.

The lien of the trustee who has advanced money to pay premiums is enforceable by sale by order of the Court : *Hill v. Trenery*, 23 Bea. 16.

Or if the husband who has covenanted to pay the premiums becomes insolvent, the Court will allow the trustees to take the surrender-value of the policy : *Beresford v. Beresford*, 23 Bea. 292.

When there are two separate funds subject to trusts, and the trustees commit a breach of trust as to one, by which it is lost, they are not allowed to say that they have improved the other fund, and that that fund is bound to make up the loss on the other. If trustees lose one part of the settled funds, they must answer for it, whatever may be the improvement of the other fund : *Wiles v. Gresham*, 2 Dr. 258, 271.

Improvement of other part of estate no excuse.

And trustees were ordered to make good payments of income to a tenant for life on securities which might have been converted, so far as they exceeded the dividends of the stock which ought to have been purchased, though the proceeds of the unauthorised security turned out to be larger than the amount of such stock if so purchased : *Dimes v. Scott*, 4 Russ. 195, 207.

Over-payment to tenant for life.

But where, in taking the account, the trustees were debited with the cash and not the investment, upon which a profit arose, they were allowed the benefit of such profit : *Fletcher v. Green*, 33 Bea. 426.

Where profit allowed.

In accounting for a breach of trust, trustees are regarded as mere stakeholders, and cannot be affected with more than they have actually received without wilful default : *Pybus v. Smith*, 1 Ves. Jun. 193 ; and even then the proof must be very strong : *Palmer v. Jones*, 1 Vern. 144, in which the Lord Keeper declared that "he would never charge a trustee with imaginary values ; but that he should be charged as a bailiff only."

Trustees charged only with what they have received.

The rule of the Court has always been and still is, that

Wilful default.

the plaintiff must aver and prove at least one act of wilful neglect or default in order to obtain a decree directing an inquiry as to wilful neglect or default : *Coope v. Carter*, 2 D. M. & G. 292, 297 ; *Sleight v. Lawson*, 3 K. & J. 292 ; *Massey v. Massey*, 2 J. & H. 728 ; *King v. Corke*, 1 Ch. D. 57.

The duty of the plaintiff *cestui que trust* is to point out and fix on any item he pleases and adduce proper evidence to show that, but for the wilful neglect or default of the defendant, it might have been received : *Sleight v. Lawson*, *supra*, in which *Coope v. Carter*, *supra*, so far as it appears to be at variance with the above general rule, is explained.

On further directions, upon the ground that, in taking the accounts under a common administration decree, a case of possible wilful default might be established, it is not the course of the Court to give an inquiry as to wilful default : *Coope v. Carter*, *supra* ; *Re Fryer*, 3 K. & J. 318 ; *Partington v. Reynolds*, 4 Dr. 253 ; but see *Brooker v. Brooker*, 3 Sm. & G. 475, in which such an inquiry was added to the decree ; and see *Tickner v. Smith*, 3 Sm. & G. 42.

Nor will the decree be added to by directing payment with compound interest : *Nelson v. Booth*, 3 D. & J. 119.

Leave to amend the statement of claim, after issue joined, in order to supply an allegation of an act of wilful default according to the rule, was given to a plaintiff, but upon the terms of not entering into new evidence : *King v. Corke*, 1 Ch. D. 57.

Trustees  
liable for  
ultimate  
conse-  
quences.

Where trustees have been guilty of previous negligence in not securing the trust property, by obtaining a decision of a question of law, however doubtful, they are not excused on the ground that the loss has ultimately happened by something that is not a direct and immediate consequence of their negligence ; and if after such previous negligence the loss happen by fire, lightning or any other accident, that would not be an excuse for them, as being their fault : *Caffrey v. Darby*, 6 Ves. 488, 496.

Thus, if trustees have, without authority, procured and accepted in lieu of so much stock an unauthorised but ample security for so much money, they will be responsible for any future loss traceable to that first error: *Fyler v. Fyler*, 3 Bea. 550; *Kellaway v. Johnson*, 5 Bea. 319.

The representatives of a trustee are liable to the extent of his assets for the consequences of his breach of trust: *Devaynes v. Robinson*, 24 Bea. 86.

Liability of representatives.

If a trustee commit a breach of trust, and the consequences of it do not occur until after his death, his estate is liable though, if redress had been sought in respect of that breach of trust, it was reparable in his lifetime: *Devaynes v. Robinson*, 24 Bea. 95.

Consequences of breach of trust arising after death of trustee.

And this is true as well in the case of wilful default as of an active breach of trust: *Ibid.*

Thus, if a debt is allowed to remain outstanding during a long period, during which the debtor was solvent, if shortly after the death of the trustee the debtor becomes insolvent, the estate of the trustees would still be liable: *Ibid.* 96.

So, if trustees who ought to invest money leave it in their names in a bank, the estate of one of the trustees who dies is liable to refund it, if the other misapplies it, even after his death, unless it can be shown by his representatives that the retaining the money in the bank was justified by necessity or otherwise: *Gibbins v. Taylor*, 22 Bea. 344.

The administrator of a sole trustee who has died insolvent and a debtor to the trust estate is entitled to, and at the request of the *cestui que trust* is bound to, exercise his legal right of retainer in order to recoup the trust estate: *Sander v. Heathfield*, 19 Eq. 21.

Retainer by administrator of defaulting trustee.

And the *cestuis que trust* can sue not only the representatives of the trustee, but may follow the assets into the hands of a paid legatee under the trustee's will: *Gillespie v. Alexander*, 3 Russ. 130; *Greig v. Somerville*, 1 R. & My. 338; *March v. Russell*, 3 M. & Cr. 31; *Davies v.*

Liability of paid legatees.

*Nicolson*, 2 D. & J. 693 ; *Dilkes v. Broadmead*, 2 D. F. & J. 566 ; *Ridgway v. Newstead*, 3 D. F. & J. 474.

Benefit  
derived by  
trustee not  
inquired  
into.

It is the constant rule of Courts of Equity to charge persons in the character of trustees with the consequences of a breach of trust, and to charge their representatives also, whether they derive benefit from the breach of trust or not : *Adair v. Shaw*, 1 Sch. & Lef. 243, 272 ; *Montford v. Cadogan*, 17 Ves. 485, 489.

It is upon this principle that, where there are two trustees, and one does not receive the money, but acts in such a way as makes him liable for the acts of the other, that liability is enforced against him : *Scurfield v. Howes*, 3 B. C. C. 91.

The Court in effect does not enquire into the particular benefit that has been made, but fastens upon the party an obligation to make good the situation of the *cestui que trust* : *Dornford v. Dornford*, 12 Ves. 127.

Trustees  
equally  
liable :

All parties to a breach of trust are equally liable ; there is between them no primary liability : *Wilson v. Moore*, 1 M. & K. 126, 146. And when several trustees are involved in one common breach of trust, a *cestui que trust* suffering from that breach, and proving that the transaction was neither authorised nor adopted by him, may proceed against either or all of the trustees : *Walker v. Symonds*, 3 Swans. 1, 75 ; *Attorney-General v. Wilson*, Cr. & Ph. 1, 28 ; *Fletcher v. Green*, 33 Bea. 426, 429.

Though one  
never  
acted.

And this is the case, though the plaintiffs do not seek to charge one of the trustees, who moreover they allege never to have acted in the trust : *Taylor v. Tabrum*, 6 Sim. 281.

Bank-  
ruptcy.

The right being joint and several, the estate of one of the trustees who becomes bankrupt is subject to proof for the breach of trust : *Exp. Norris*, 4 Ch. 280 ; see *ante*, p. 220.

Action  
against  
one of  
several  
trustees.

If the action is for breach of trust only, all or any of the parties may be sued without joining the others (subject to the right of the defendant to bring in, by notice, his co-trustee under Order XVI. r. 13) : *Plumer v. Gregory*, 18 Eq. 627.



Where two sets of trustees had committed a breach of trust, it was held that one set could be sued without making the other set parties to the action: *McGachen v. Dew*, 15 Bea. 84. Suing one of two sets of trustees.

The joint and several liability for breach of trust is of course subject to any special arrangement under the terms of the trust whereby the custody of the property is apportioned between the trustees: *Birls v. Betty*, 6 Madd. 90; but whether the plaintiff intends to recover the entire loss against one of the trustees, or equal parts against both, the order goes against both for the whole: *Rehden v. Wesley*, 29 Bea. 213, 215. Special arrangement as to liability.  
Form of order.

If one or more of several trustees pay the whole amount decreed to be paid in an action for breach of trust, a case for contribution by those who have not paid arises; and previous to the Judicature Act such contribution could not be had but in a new suit for the purpose: *Fletcher v. Green*, 33 Bea. 513, 515; *Coppard v. Allen*, 2 D. J. & Sm. 173, 182; but by rule 13 of Order XVI., which is to be read with sub-sect. 3 of s. 24 of the Judicature Act, 1873, this remedy over against co-trustees would, it seems, now be triable, if not enforceable, in the same action. But by rule 5 of the same Order, "the plaintiff may at his option join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes." And if it were held that this rule did not touch the joint and several liability of trustees, the 2nd rule of the 7th Consolidated Order would still apply: namely, "that where the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the Court as parties to a suit concerning such demand all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable." Upon this rule it is held that it applies to a joint and several demand against trustees, but that where the case is not one of breach of trust merely, but a general account is also Contribution between trustees.

sought, the rule does not dispense with the necessity of all the trustees being represented in the action : *Coppard v. Allen*, 2 D. J. & Sm. 173, 181.

Contribution to costs paid.

The right of a trustee, who has paid what is found due for a breach of trust to be recouped by his co-trustee, extends to a sum of costs allowed to his co-trustee, and such costs will for that purpose be carried to a separate account, with liberty to apply : *Birks v. Micklethwait*, 33 Bea. 409.

No equity for indemnity between co-trustees where no breach of trust.

There is no equity by which one trustee can obtain, by an action against his co-trustee, an indemnity in respect of a security taken by the trustees upon property formerly belonging to the co-trustee, who thereupon receives payment for it from the mortgagor ; for there is no breach of trust in such a transaction, and the Court will not go into remote consequences for the purpose of sustaining such a case : *Butler v. Butler*, 7 Ch. D. 116.

*Secus*, where breach of trust, though plaintiff wrong-doer.

If, however, there has been a breach of trust by both trustees, it is competent for one of them to bring an action, though he be a wrongdoer, to compel the other to refund his share of the loss : *Baynard v. Woolley*, 20 Bea. 583, and the cases in note (g), p. 585.

*Cestuis que trust* need not be parties.

As a general rule, in an action by a trustee for contribution by his co-trustees, it is not necessary to make the *cestuis que trust*, *quâ cestuis que trust*, parties to the action, yet anybody, whether he is a *cestui que trust* or a stranger, who has received the trust property and been guilty of breach of trust, must be made a party : *Jesse v. Bennett*, 6 D. M. & G. 609.

Indemnity by stranger benefited by breach.

A person who, not being a trustee, has induced the trustees to commit trust-money to him on loan or otherwise, is liable to indemnify the trustees if made liable for the consequences of their breach of trust : *Greenford v. Wakeford*, 1 Bea. 576 ; *Fyler v. Fyler*, 3 Bea. 550. As to the case where such person is also a *cestui que trust*, see *post*, p. 333.

Nature of debt created by

As between trustee and *cestui que trust* the debt created by a breach of trust is either a simple contract

debt or a specialty debt, according as the trustee has bound himself by a specialty in words expressly constituting a covenant, or construed as intended to constitute a covenant: *Adey v. Arnold*, 2 D. M. & G. 432; *Wynch v. Grant*, 2 Dr. 312; *Newport v. Bryan*, 5 Ir. Ch. R. 119; *Isaacson v. Harwood*, 3 Ch. 225; *Holland v. Holland*, 4 Ch. 449; *Re Dickson*, 12 Eq. 154; and see *Wood v. Hardisty*, 2 Coll. 542; *Courtney v. Taylor*, 7 Scott, N. R. 749; 6 Man. & Gr. 851; *Marryat v. Marryat*, 28 Bea. 224.

breach of trust.

But the debt constituted by the right of contribution between trustees, one of whom has paid the whole loss, is *per se* a simple contract debt only: *Priestman v. Tindall*, 24 Bea. 244; *Lockhart v. Reilly*, 1 D. & J. 464, except so far as it is constituted a specialty debt by s. 5 of the Mercantile Law Amendment Act (19 & 20 Vict. c. 97). Where, however, the claim is against the estate of a deceased trustee, the Act of 32 & 33 Vict. c. 46, which has destroyed the priority of specialty debts provable against estates of deceased persons, has in such cases rendered it immaterial whether the debt was by specialty or not.

As between trustees.

It is established by all the cases that if the *cestui que trust* joins with the trustee in that which is a breach of trust, knowing the circumstances, such a *cestui que trust* can never complain of such a breach of trust; but the Court must inquire into the circumstances which induced concurrence or acquiescence: *Walker v. Symonds*, 3 Swans. 164; *Fyler v. Fyler*, 3 Bea. 550, 569; and see *Butler v. Carter*, 5 Eq. 276.

Concurrence of *cestui que trust* in breach of trust : inquiry.

Thus, where a trustee, on his retirement, assigns the trust fund contrary to the terms of his trust to the continuing trustee alone, who misapplies it, both he and the continuing trustee are liable, but the Court directs an inquiry whether any and which of the parties interested in the fund have consented to or approved of the transfer, or the sale by the continuing trustee: *Wilkinson v. Parry*, 4 Russ. 272.

Inquiry as to assent to breach of trust.

Knowledge  
necessary  
to fix con-  
curring  
beneficiary.

It must be shown that the *cestui que trust* was at least cognisant of the breach of trust in order to deprive him of his right against the trustees: *Buckeridge v. Glasse*, Cr. & Ph. 126, 135; and see *Ryder v. Bickerton*, 3 Swans. 83 n.

Not where  
assent is  
by person  
not *sui*  
*juris*.

No such inquiry will be directed in the case of a married woman, who, though consenting, is restrained from anticipation, and is, moreover, directed by the settlement to consent to an act which, without such consent, the trustees could not, without a breach of trust, perform: *Cocker v. Quayle*, 1 R. & My. 535.

*Feme*  
*coverte*.

The knowledge or consent of a husband cannot bind a married woman: *Underwood v. Stevens*, 1 Mer. 712, 717; *Montford v. Calogon*, 19 Ves. 633, 639; *Cresswell v. Dewell*, 4 Giff. 460, 465.

As to the liability of a married woman having separate estate to answer for a breach of trust, see *ante*, p. 265.

Where the *feme coverte* has separate property, that property is bound by her acquiescence in a breach of trust, unless she is restrained from anticipation: *Kellaway v. Johnson*, 5 Bea. 319.

Infancy.

Parties under disability, such as infants, cannot of course be taken to have concurred in a breach of trust: *Wilkinson v. Parry*, 4 Russ. 272.

Where  
*cestui que*  
*trust* re-  
ceives  
benefit.

A person who has actually received the money arising from the breach of trust in which he has concurred, cannot afterwards, under his title as *cestui que trust* or otherwise, obtain the repayment of it: *Nail v. Punter*, 5 Sim. 555; *Jacobs v. Rylance*, 17 Eq. 341.

Acquies-  
cence.

Acquiescence or adoption by a *cestui que trust*, having a knowledge of the breach of trust, but assenting to it, or taking no steps to obtain redress for a long lapse of time, releases the trustee and bars the *cestui que trust* from afterwards complaining of that breach of trust, of which he often has enjoyed the benefit during that time: *Brice v. Stokes*, 11 Ves. 324; *Walker v. Symonds*, 3 Sw. 1, 64, 75; *Thompson v. Finch*, 22 Bea. 316, 324; *Griffiths v. Porter*, 25 Bea. 236; *Farrant v. Blanchford*, 1 D. J. & Sm. 107; *Sleeman v. Wilson*, 13 Eq. 36.

As to the extent of acquiescence which will constitute a bar, see *supra*, p. 316 *et seq.*

A tenant for life joining in a breach of trust is answerable in the first instance : *Montford v. Cadogan*, 19 Ves. 638.

Primary liability of concurring beneficiary.

Where *cestuis que trust* for life have induced trustees, in breach of their trust, to invest in a higher paying dividend than their trust or the rules of the Court permit, as the loss which ought to fall on those who instigated the breach of trust is laid by the Court upon the trustees, the trustees are entitled to stand in the place of the *cestuis que trust* in remainder to recover what has been actually received by the tenants for life, but to the extent only of the surplus income actually received by them : *Raby v. Ridehalgh*, 7 D. M. & G. 104.

Extent of liability.

And, therefore, if no benefit has been derived by the *cestui que trust* thus implicated, no right of indemnity exists as against him : *Walsham v. Stainton*, 1 H. & M. 322, 337.

Trustees have a right to stop the receipt of dividends by a person having a partial interest in the trust estate, and who has induced the trustees to commit a breach of trust : *Cocker v. Quayle*, 1 R. & My. 538 ; *Lincoln v. Wright*, 4 Bea. 427 ; *McGachen v. Dew*, 15 Bea. 84 ; *Vaughton v. Noble*, 30 Bea. 34, 39.

Impounding interest of concurring beneficiary.

And a trustee cannot waive, or, by bargain for his own benefit with the person whose interest is liable to assist in repairing the breach of trust, destroy the security of that interest as a source of reparation to the *cestui que trust* : *Fuller v. Knight*, 6 Bea. 205.

Right to impound cannot be waived.

The beneficial interest of a trustee is also liable to be impounded ; and assignees and incumbrancers, not being in the position of purchasers for value without notice, of the interest of a trustee liable to be impounded for his breach of trust, take their title subject to the equity of the *cestuis que trust* to impound the interest assigned : *Priddy v. Rose*, 3 Mer. 86 ; *Morris v. Livie*, 1 Y. & C. C. C. 380 ; *Cole v. Muddle*, 10 Hare, 186 ; but see *British Mutual*

Impounding beneficial interest of trustee.

*Co. v. Smart*, 10 Ch. 567; especially after notice of proceedings to enforce that equity: *Irby v. Irby*, 25 Bea. 632.

**Annuity.** If the interest of the trustee is an annuity, it may be stopped until the amount is recouped: *Skinner v. Sweet*, 3 Madd. 244.

**Income.** In other cases the income is ordered to be accumulated until the debt is paid: *Exp. King*, 2 Mont. & A. 410.

**Interest.** It seems that, as the liability is in the nature of tort, no interest can be charged: *Prime v. Savell*, W. N. 1867, 227.

**Legal life estate can not be impounded.** The legal life estate of a trustee is not liable to be impounded to answer a breach of trust with regard to other parts of the property as to which he is a trustee only: *Egbert v. Butter*, 21 Bea. 560; *Fox v. Buckley*, 3 Ch. D. 508; and see *Exp. Barff*, De G. 613.

**Defaulting trustee entitled to trust fund.** A defaulting trustee who becomes entitled, as next of kin of a deceased *cestui que trust*, to a share not exceeding the amount of his debt to the estate, is not entitled to retain his share as such next of kin, but is regarded as having paid himself anything which could be due on that account; *Jacubs v. Rylance*, 17 Eq. 341.

**Release.** Where a breach of trust has been committed, from which a trustee alleges that he has been released, it is incumbent on him to show that such release was given by the *cestui que trust* deliberately and advisedly, with full knowledge of all the circumstances, and of his own rights and claims against the trustee: *Life Association v. Siddal*, 3 D. F. & J. 74; *Farrant v. Blanchford*, 1 D. J. & Sm. 119.

**Infant's.** A release from a breach of trust cannot be given by an infant; and if the breach of trust have been committed during the infancy, a release on attaining majority without a knowledge of all the facts would not be binding (*Walker v. Symonds*, 3 Sw. 1, 69); but if such knowledge be in the possession of the person so situated, his release will be a good discharge: *Arelina v. Melhuish*, 2 D. J. & Sm. 288.

That a married woman may give a release to her trustees in respect of breaches of trust by them with regard to her separate estate, and, so far as she is restrained from anticipation, so that her release does not affect future income, may be gathered from the statement of the law relating to the separate estate: *ante*, p. 257 *et seq.*

Married woman.

Where an action is brought against trustees for a breach of trust, the decree against them is usually made with costs: *Byrne v. Norcott*, 13 Bea. 336, 346. And see generally as to costs of and against trustees, *Morgan & Davey*, pp. 288 *et seq.*

Costs.

The order for costs against trustees guilty of a breach of trust is made against all of them, on the ground that the question is not whether one of the defendants is more culpable than the other, but whether the *cestui que trust* is to be deprived of the double security which a decree for costs against all the parties would give him: *Lawrence v. Bowle*, 2 Ph. 140; and see *Littlehales v. Gascoyne*, 3 B. C. C. 73.

Order for costs is against all trustees.

But *cestuis que trust* who have concurred in the breach of trust are primarily liable for the costs: *Eaves v. Hickson*, 30 Bea. 136.

Costs payable by *cestuis que trust*.

A trustee who has committed a breach of trust may be allowed the costs, as between solicitor and client, of an action for the general administration of the estate, though he may be ordered to pay the costs so far as they were occasioned by the breach of trust: *Pride v. Fooks*, 2 Bea. 430.

Costs limited to breach of trust.





# INDEX.

---

## ABATEMENT

of portions, where estate insufficient, 165

## ABILITY

of father to maintain, [*see* MAINTENANCE]

## ABROAD, [*see* JURISDICTION]

trustee, new trustees appointed, when, 210  
receipt from legatee, petition for advice as to, 109  
creditors, execution of trust deed by, time for, 38  
absence of one of trustees, no ground for receiver, 273  
of sole trustee, receiver on, *ib.*

## ABSENCE, [*see* ABROAD]

## ABSTRACT

to be demanded on re-advancing money, 142

## ACCELERATION

of sale, [*see* SALES BY TRUSTEES]

## ACCEPTANCE

of trust, 12—14  
presumed till contrary proved, 11, 12  
execution of deed not necessary for, 12  
by executor upon trust, 13  
by trustee under different trust, 13  
proviso that all assenting trustees shall execute, 13  
by acquiescence, 13  
parol evidence to prove, 13  
by conduct, 13, 14  
acting as agent for other trustees is not, 14  
holding trust deed for safe custody, is not, 14  
by effect of recitals, 14

ACCEPTANCE—*continued*.

- by person improperly appointed, 14
- by devisee of trust estates which do not pass, is bound by, 14
- effect of, 14
- refusal of, without payment, 200
- under seal, no distinction as to breach of trust, by, 14
- of secret trust, by silence or conduct, 80

## ACCIDENT,

- failure of trust by, Court prevents, 103

ACCOUNT, [*see* ACCOUNTS; BANK; BANKER; FOLLOWING TRUST ESTATE]

- at bank, trust money should be paid in to what, 99
  - private account, not to trustee's, *ib.*
  - earmarking, *ib.*
- mesne profits, of, [*see* STATUTE OF LIMITATIONS]

## ACCOUNTANT,

- charges of, trustees may charge, 201

## ACCOUNTS,

- trustees must be ready with, 228
  - blending of, with their own, 99, 228
    - or partners', *ib.*
  - co-trustees, keeping, *ib.*
  - inability or refusal to show, *ib.*
    - interest payable on, 285
  - costs of action to compel rendering, 228, 229, 317
  - special directions by Court as to, 229
  - old, when to be taken as correct, 229, 318
  - death of trustees, after, 317
  - continuing open, no bar where, *ib.*
  - destroying, 100
  - false, interest payable by trustees rendering, 285
- decree for, though vouchers taken abroad by agent of trustees, 18
- intricacy of, whether ground for remuneration, 196

## ACCRETIONS

- of separate estate are separate estate, 252
- [*see* SEPARATE ESTATE]

## ACCRUER,

- tenant in common with, or without, general devise to, prevents trust estates passing under it, 22
- separate use attaches to share given by way of, 257

## ACCUMULATION,

- trust for, when against rule against perpetuities, 152
  - under Thellusson Act, 153
  - periods allowed for, *ib.*
  - exception of debts, portions, and timber-money, *ib.*
  - extended to Ireland, *ib.*
    - to Scotland, whether, *ib.*
  - one of periods mentioned only allowed, *ib.*
  - time runs from testator's death, *ib.*
  - during minority of unborn child not allowed, 154
  - void for excess only, *ib.*
    - though excess to meet contingencies, *ib.*
    - to pay premium on policy for life of another is not a void, *ib.*
  - exception extends to future debts, *ib.*
  - debts, payment of, mode of, by reference to, 155
    - sales by Court for, *ib.*
    - sinking fund for, *ib.*
    - "of some other person," *ib.*
  - portions charged or to be charged within s. 2, *ib.*
    - what, within section, 155, 156
  - of interest on portions, 167
  - right to excessive, 156
  - till investment, right to, 97, 147
  - maintenance out of, 175
    - under Cranworth's Act, 171
    - though direction for, 173
  - proof for, against bankrupt trustee, 219
  - interest against trustees for omission to make, 287

## ACKNOWLEDGMENT,

- keeps debt alive, when, 315
- by one trustee, effect of, 316
- husband's, of wife's separate use, 249
- married woman's, of deed as to separate estate unnecessary, 258
  - on sale to trustees of trust estate, 184

ACQUIESCENCE, [*see* STATUTE OF LIMITATIONS]

- presumption of acceptance of trusts from, 13
- of co-trustee in sale, 114
- in trust deed by creditors, 37
- in breach of trust [*see* BREACH OF TRUST]
- in wrongful acts for which trustee might be removed, 216
- in purchase of trust estate by trustee, costs where, 193
  - [*see* PURCHASE OF TRUST ESTATE]
- fraud prevents, during ignorance, 296
- executor of deceased partner, where it binds, 76
- bars remedy against constructive trust, 75, 307

ACQUIESCENCE—*continued*.

- married woman's, in dealings of husband as to separate estate, 249
- restraint on anticipation does not protect against, 268

ACT [*see* PRIVATE ACT; BILL]

## ACTION

- for administration where *c. q. t.* refuses to discharge trustee, 236
  - is discharge to trustee, 237
- by *c. q. t.* in name of trustee, 279
- accounts, where trustee refuses to furnish, 228
- by trustee under creditor's deed, to get in assets, 41
- by purchaser to compel trustees to convey, 224
- to declare infant heir trustee for purchaser, 225
- for contribution on joint purchase, 69
  - between trustees liable for breach of trust [*see* BREACH OF TRUST]
- as to separate estate [*see* SEPARATE ESTATE]
- against solicitor, joining trustees in, 19
- right kept alive by bringing, 316
- sale after, should put purchaser on inquiry, 129
- after, trustees may not sell without leave, 113
- after, new trustees not to be appointed, 205
  - injunction to restrain appointment of, 280
- maintenance, power of, gone after, 174
- title deeds, by remainderman for inspection of, 227
- Court will not part with deeds, pending, 226
- leave to bring or defend, 103
- disclaimer by trustee after, 11
- trustees defendants should not sever defence in, 16
  - except in special cases, *ib.*
  - what are special cases, *ib.*
  - costs where they sever, *ib.*
    - paid to innocent trustee, *ib.*
- innocent trustee may sever defence in, *ib.*
- trustee residing at a distance may sever defence, *ib.*
- admission by trustee, payment into Court on, in [*see* PAYMENT INTO COURT]
- by trustees, costs of, where all *c. q. t.*'s *sui juris*, 102
  - [*see* COSTS]

ADMINISTRATION, [*see* ACTION]

- action for, of lands abroad [*see* FOREIGN PROPERTY]
- receiver, where appointed in action for, 272
- to intestate legatees unnecessary when shares small, 234

## ADMINISTRATOR,

- of surviving trustee, power of, to appoint new trustees, 203
- cum test. annexo* may exercise power of sale, where all trustees disclaim, 12
- renewal by, in his own name, 74 [*see* CONSTRUCTIVE TRUSTS]
- cannot buy estate, 185
- of defaulting trustee must use right of retainer, 329
- husband, rights of, as, where wife has separate estate, 251
- of convict's property under 33 & 34 Vict., c. 23, 199, 243

ADMINISTRATOR GENERAL [*see* COMMISSION]

## ADMISSION,

- payment into Court, order for, on [*see* PAYMENT INTO COURT]

## ADOPTION,

- evidence of, 65

## ADULT,

- advancement of [*see* ADVANCEMENT]
- maintenance of, 175

## ADULTERY

- does not deprive husband of life interest, 235

## ADVANCE

- by portion under Statute of Distributions, s. 5, 180
- of trust money on securities, all trustees must join in, 15
- out of pocket, by trustees, lien for, 102
- for improvements under 27 & 28 Vict., c. 114  
[*see* IMPROVEMENTS]

## ADVANCEMENT

- power of, is a usual power in settlement, 50
- survivorship of, 181
- where unexercised, undertaken by Court, *ib.*  
inquiry, *ib.*
- loan to husband under, 138
- where no power of, 178
- sanction of Court to, 109, 178  
[*see* ADVICE PETITIONS]
- out of contingent interests, *ib.*  
consent to, *ib.*
- during minority, *ib.*
- to adults, *ib.*
  - to pay debts, *ib.*, 179
  - under what words, 178
  - pending preparation for profession, 179
- settlement of fund for, *ib.*
- to husband out of wife's fund, *ib.*  
security in such case, *ib.*

ADVANCEMENT—*continued*.

- to wife, on husband's covenant for separate use, 179
- to parent out of child's fund, *ib.*
  - to prevent parent's insolvency, *ib.*
- to daughter on marriage, *ib.*
- to preserve property by clearing arrears of rent, 179
- for education, *ib.*
  - trust for, is a general legacy, *ib.*
- what is, under Statute of Distributions, 180
- failure of purpose of, *ib.*
  - by impossibility, *ib.*
    - neglect of trustee, *ib.*
    - death of child, *ib.*
  - destination of fund on, *ib.*
- where both trustees to concur in, 181
- breach of trust for, remedy for, *ib.*
- excessive, how made up, *ib.*
- out of portions [*see* PORTIONS]
- grant or lease to wife or child is presumed to be, 60  
[*see* RESULTING TRUSTS, 61—66]

## ADVERSE CLAIM

- by creditors against trust for creditors, 37, 41

## ADVERSE POSSESSION,

- c. q. t.*'s is not, to trustee, 314
- one *c. q. t.*'s is not to other *cs. q. t.*, 315
- c. q. t.* barred if trustee barred by, *ib.*
  - remedy of, *ib.*
- curtesy barred by, when, 271

## ADVERTISEMENTS

- of sale by auction, by trustees, 112

## ADVICE

- separate, as to contract between trustee and *c. q. t.* for remuneration, 201

## ADVICE PETITIONS, 108—110

- by trustees as to management of trust, 108
  - order on, effect of, *ib.*
  - rights not decided upon, *ib.*
  - construction of settlement not decided upon, *ib.*
  - no evidence allowed upon, 108, 109
  - where point of law on which cases conflicting, 108
  - definite question to be submitted, *ib.*
  - no inquiry directed, 109
  - fictitious case not entertained, *ib.*
- questions determined on investment, *ib.*

ADVICE PETITIONS—*continued.*

- in East India Stock, 109
- Railway Debentures, *ib.*
- Foreign Securities, *ib.*
- on apportionment of dividends, *ib.*
  - ground rents, *ib.*
  - re-building, *ib.*
  - powers of sale, *ib.*
  - consent to sale, 110
  - reserving biddings, 109
- power of leasing, *ib.*
- power of maintenance, *ib.*
  - and advancement, *ib.*
- appointment of new trustees, *ib.*
  - colonial trustees, *ib.*
- conversion of leaseholds, *ib.*
- receipt from legatee abroad, 110
- interest on legacies, *ib.*
- liability on covenants, *ib.*
- compromise, *ib.*
- service of, *ib.*
- practice on, *ib.*

## ADVOWSON,

- purchase of, by trustees, 147

## AGENT

- not acting strictly as agent, liable as trustee, 19, 241, 303, 309
- constructive trustee, becomes, when, 72
- acting in ordinary course of business, 241
- person appointed trustee does not accept trust by acting as, for other trustees, 14
- executors need not obey testator's desire to continue, 55
- executor acting as, cannot charge commission, 197
- payment to co-trustee as, by trustees, 19
- trustees need not take security from, 20
- payments by, in ordinary course, 19
- payment, premature, to, 100
  - proper, to, 100
- to receive sale-moneys for trustees, should be appointed in writing, 119
- compulsory payment into Court by, 274
- trustee bidding through, for purchase of trust estate, 182
- buying trust estate for trustee by contract, *ib.*
- trustee purchasing trust estate as, for stranger, *ib.*
- taking conveyance to himself, 68
- must not take lease of principal's land, 186

AGENT—*continued*.

- dealing for himself, 187
  - burden of proof, *ib.*
  - value, proof of, on, *ib.*
  - undue profit in, *ib.*
- selling own goods to principal, *ib.*
- purchasing from purchaser of principal's goods, *ib.*
- following property into hands of, 299
- of trustees abroad, liability to account where, 18

## AGREEMENT

- for lease by married woman [*see* SEPARATE ESTATE]

## ALIEN

- may hold any kind of property, 244
- under trust before Act of 1870, subject to right of Crown, *ib.*
- may be trustee, when, 212

## ALIENATION,

- effect of, on consent to be given by alienor, 119
- trusts in restraint of, illegal, 84
  - over on, good, *ib.*
- of separate estate [*see* SEPARATE ESTATE]

## ALLOWANCES,

- to *trustees*, not permitted unless provided for, 196—202
  - though estate benefited, 196
  - under West Indian law, 199
  - consignee's lien, *ib.*
- to *mortgagee* being auctioneer, of commission on sale, 197
  - for receiving rents, *ib.*
  - paying bills, &c., *ib.*
  - being solicitor, of profit costs, *ib.*
- to *solicitor-trustee* of profit costs, 197
  - special circumstances, 198
  - inquiry as to, *ib.*
  - when employed by co-trustees, 197
  - partner of, of full costs to, 197, 198
  - of costs against another client, 198
- to *bankruptcy trustee* being a solicitor, 199
- to *agent* being executor, of commission, 197
- to *bankers* being trustees, of more than simple interest, 198
- to *guardians*, of profits made, *ib.*
- to *committees*, *ib.*
- to *inspectors* of creditors' deeds for goods supplied, *ib.*
- to *surviving partner* for trouble in winding-up, *ib.*
- to mate of ship for money made with deceased captain's money, 199
- to administrator in Bengal, *ib.*



ALLOWANCES—*continued.*

to administrator of convict's property under 33 & 34 Vict.  
c. 23, s. 11, 199

*provision made for*, 199

does not cease when action brought, 200

by verbal agreement, *ib.*

extra allowances though, *ib.*

inquiry if amount not specified, *ib.*

auditor, for fees of, *ib.*

"liberty to charge for professional services," *ib.*

annuity to trustee for trouble, *ib.*

legacy to trustee annexed to office, *ib.*

no bar to remuneration, *ib.*

stipulation for remuneration before taking trust, *ib.*

*contract as to*, 201

*c. q. t.* must not be under pressure, *ib.*

separate advice as to, *ib.*

between solicitor-trustee and co-trustee executrix, *ib.*

between mortgagor and mortgagee, *ib.*

between solicitor-mortgagee and mortgagor, *ib.*

*just allowances*,

opinion of counsel, 201

taking directions, *ib.*

charges on sale, *ib.*

accountant's charges, *ib.*

rent-collector's charges, 202

getting in rents, *ib.*

recovery of, *ib.*

AMERICAN STOCK [*see* INVESTMENT]

ANNUITANT,

with power of sale, can buy estate charged, when, 186

ANNUITY,

*quantum* of legal estate where trust to pay, 5

lasting after death of trustee requires legal fee, 7

devise to trustee where personalty unable to serve, *ib.*

charge of, gives power to give receipts, where [*see* RECEIPT  
OF TRUSTEE]

charged on Long Annuities, conversion where, 93

remain charged on renewed lease, 77

investment on [*see* INVESTMENT]

not proper consideration on sale for trustees, 119

purchase of, by receiver, 188

payment of sum to answer, to annuitant, 102

fund to answer, if not itself disposed of, results, 58

payment of, to annuitant, 102

arrears of, interest on, when payable by trustee, 284

to trustee for trouble on cesser of trust, 200 .

## ANNUITIES,

terminable, to be sold as part of residue, when, 91

## ANTICIPATION,

restraint on [*see* SEPARATE ESTATE]  
where added in executory trust, 49  
where Court makes executory life estate not *sans*  
waste, *ib.*

## APPEAL,

costs of, by trustees, 230

## APPLICATION,

seeing to, of purchase-money [*see* RECEIPT OF TRUSTEE]

APPOINTMENT, [*see* POWER—CESTUI QUE TRUST]

power of, to husband, may be inserted in settlement under  
executory trust, 50  
of portions [*see* PORTIONS]  
of doubtful validity, trustees acting on, 102  
by letter in favour of volunteer, 31  
of new trustees [*see* NEW TRUSTEES]

## APPORTIONMENT,

of dividends, 140  
of stock sold for investment in land, 147  
of costs where trustees sever defence, 16  
of portions over several estates charged, 165  
of price on joint sale by trustees and others, 117  
where price paid into Court, *ib.*  
of fines and expenses of renewal of lease [*see* RENEWAL OF  
LEASES]

## APPRENTICESHIP,

advancement for, 180

## APPROPRIATION,

of funds to trustee's account at banker's, 301  
rule in Clayton's case, 301, 302

## ARREARS,

of separate estate [*see* SEPARATE ESTATE]  
liable for breach of trust, 266  
of rent, release of, by trustees, 101  
interest on, of annuity or income, when not given, 284

## ASSENT,

to trust deed by creditors, 37  
implied, 38  
where trustee a creditor, *ib.*

## ASSETS,

admission of [*see* PAYMENT INTO COURT]

## ASSIGNEE

of equitable interest, how secured, 234

refunding wrong payment by, 231

## ASSIGNMENT,

by one to himself and another under Lord St. Leonards' Act,  
s. 21, 213

by continuing trustee to himself and new trustee, *ib.*

by one deed, *ib.*

of equitable estate [*see* NOTICE], 213, 288

voluntary [*see* VOLUNTARY TRUSTS]

upon trust for creditors uncommunicated and unacted upon,  
40

to be acted upon at request of debtor,

41

[*see* TRUSTS FOR CREDITORS]

of policy, neglect of trustees to give notice of, 89

## ASSIGNS,

devise to, permits devisee of trust estates to perform trusts, 23

not where "assigns" omitted, *ib.*

## ATTACHMENT,

for non-payment of fund into Court after order, 276

Debtors' Act, 1869, does not abolish, *ib.*

order under, not made *ex parte*, 277

discretion as to under Debtors' Act, 1878,

*ib.*

by Irish Court, *ib.*

"fiduciary capacity" under, *ib.*

where money spent, *ib.*

poverty of trustee, *ib.*

non-acting trustee, liability of, *ib.*

wilful default not within, *ib.*

unascertained sum of interest, *ib.*

where trustee is bankrupt, 278

compounds, *ib.*

order before bankruptcy, where, *ib.*

## ATTAINDER,

no escheat or forfeiture on, for felony, 243

## ATTORNEY-GENERAL,

sanction of to criminal proceedings against trustees, 281

jurisdiction of, as to foreign charity, 246

## AUCTION,

sale by, by trustees, 111

AUCTION--*continued.*

- particulars on, description of trustees in, 112
- loss on sale by trustees, by, *ib.*
- advertisements of, by trustees, *ib.*
- reserve price at, fixed by trustees, *ib.*
  - buying in without, *ib.*
  - sale at, after abortive sale, *ib.*
    - to co-trustee, *ib.*
- opening biddings, 112, 185
- injunction against, where improper, 113
- conditions of sale by, not to be depreciatory, 120
  - what, are depreciatory, *ib.*
  - special, *ib.*
  - counsel to draw, *ib.*
- misdescription, compensation for, on, 121
- purchase by trustee of trust estates, at, 182, 192
  - in lots, 192
  - after abortive auction, or reserve, 184

## AUCTIONEER,

- deposit may be left with, 100
- partner of, being trustee, cannot charge commission on sale, 197

## AUDITOR,

- expenses of, appointed by testator, 200

## AUTHORITY,

- written, to solicitor to receive purchase money, 18

## BALANCES,

- investment of, 87
- interest for, retained by trustees [*see* INTEREST]
- expenses of renewals may be paid out of, in trustees' hands, 148

BANK [*see* BANKER ; FOLLOWING TRUST ESTATE]

- trust money may be placed in, when, 98
  - how much, *ib.*
  - for how long, *ib.*
  - to answer contingent legacies, *ib.*
  - earmarking, 99
  - from necessity, 329
- should not be left in, after new trustees appointed, 98

BANK—*continued*.

- after order to pay into Court,  
*ib.*
  - with an order to invest, 99
  - at interest, *ib.*
  - so that sole control lost, *ib.*
  - to trustee's private account, *ib.*
- loss of, by payment into, 98
- failure of, loss by, 98, 99
- solicitor paying trust money into own account, into, 18
- payment into, pending appointment of new trustees, 19
- keeping money in, no excuse from paying interest, 283
- appropriation of trustee's money in, 301

## BANKER,

- note of, bearing interest, should not be taken by trustees, 99
- promissory note of [*see* INVESTMENT.]
- investment by, loss by, 99
- trust-money, liability for, of, 302
  - where paid into account, marked trust account,  
*ib.*
  - where not so marked, *ib.*
  - where trustee pays to own account from trust  
account, *ib.*
- not a trustee for customer, 302, 309
- who is trustee advancing money can charge only simple  
interest, 198
- liability of trustee for acts of, indemnity against, 237

BANKRUPT, [*see* BANKRUPTCY]

- feme coverte can be made, whether, 265
- partner, purchase by partner of share of, 183

## BANKRUPTCY

- of trustee, trust property not affected by, 218
  - not in order and disposition, on, 218,  
219
- proof by *c. q. t.* on, 219
  - for interest, *ib.*
  - where money traced into a mortgage, *ib.*
  - where trust to accumulate, *ib.*
  - where one of several trustees bankrupt, *ib.*
  - where all bankrupt, *ib.*
  - against bankrupt firm, *ib.*
- life interest of trustee impounded if equitable, *ib.*
  - secus*, if legal, *ib.*
- set-off, 220
- breach of trust a simple contract debt in, *ib.*

BANKRUPTCY—*continued.*

- is good petitioning creditor's debt, 220
- discharge, effect of, *ib.*
- all trustees must join in proving debts in, 15
  - except in special cases, 16
- c. q. t.* must join in proving in, when, *ib.*
- proof in, for breach of trust, 330
  - in respect of continuing testator's trade, 90
- effect of on power of bankrupt to consent to sale, 119
  - on power to appoint new trustees, 209
- dropping of policy by, of person liable to pay premiums, 89
- trust to continue interest after, illegal, 84
- gift over on, good, *ib.*
- trust for maintenance after, when good, *ib.*
  - [*see* MAINTENANCE]
- of husband, contingent alienation of separate estate on, 259
  - liability of wife's separate estate on joint and several note, on, 264
- creditors under trust must come in before debtor's bankruptcy, 38
- rules of, as to secured creditors followed in equity, 40
- "incapable to act," trustee is not, by, 210
- "unfit to act," trustee is, by, 209
  - though after discharge, *ib.*
- injunction to restrain trustee from getting in trust estate, on, 279
- receiver appointed on, of trustee, 272
- attachment before and after, of trustee, 278
- removal of trustee on, when, 209
  - under Bankruptcy Act, s. 117, *ib.*
- trustee in, must not delegate trust, 17
  - purchase by, of assets, 186
  - being solicitor, may contract for remuneration, 199
  - following property into hands of, 299, 300, 304
  - charged with interest on money kept in hand, 286
- jurisdiction as to questions in, 182

## BANK STOCK

- investment on [*see* INVESTMENT]

## BARE TRUST,

- where passed by general devise, 21—24
- [*see* DEVISE OF TRUST ESTATES]

## BARE TRUSTEE,

- meaning of, 224, 225
- may buy trust estate, 184

BASTARD [*see* ILLEGITIMATE CHILDREN]

BENEFIT

from breach of trust not inquired into, 330

BEQUEST [*see* LEGACY]

upon secret trust [*see* SECRET TRUSTS]

BIDDING,

reserved, petition for advice as to, 109

opening, 112, 185

BILL OF EXCHANGE [*see* INVESTMENT]

trustees must get in money due on, 87

neglect to sue on, 88

of married woman [*see* SEPARATE ESTATE]

BLENDING [*see* FOLLOWING TRUST ESTATE]

trust moneys, liability of trustees for, 99

by not keeping accounts, *ib.*

destroying accounts, 100

subject to declaration of trust, effect of, 33

BOND [*see* INVESTMENT]

transferable by delivery should not be left with co-trustee,  
240

trustees must get in money due on, 87

husband's trustees should sue on, *ib.*

debtor on, injury to credit of, no excuse for not suing, 88

to keep up insurance to secure fund advanced for wife,  
179

of husband not proper under power to advance to him, 88

voluntary trust by indorsement on, 29

married woman's [*see* SEPARATE ESTATE]

as security to answer breach of trust, 284

BREACH OF TRUST,

acquiescence in [*see* STATUTE OF LIMITATIONS]

by co-trustee, severing defence, where no, 16

advancement without power, 178, 181

bank, depositing money in, instead of investment, 99

so that sole control lost, *ib.*

blending with private money in, *ib.*

for reasonable time, is not, 98

for future payments, is not, *ib.*

banker, liability of, for, 302

allowing, to invest money, when, 99

BREACH OF TRUST—*continued*.

- lending to, who is partner of trustee, 137
  - where not a partner, 352
- compromise, where, 88, 89
- consent to marriage fraudulently given, 104
- co-trustee, handing money to, for investment, 17
  - power of attorney, giving to, to sell stock, *ib.*
  - payment to, in ordinary course, is not, 17, 18, 19
- devise of trust estates is not, 24
- information, withholding, 229
- interest charged for [*see* INTEREST]
- investment before Lord St. Leonards' Act, 131
  - in redeemable securities, 132
    - Exchequer Bills, *ib.*
    - personal security, 136
    - new shares, 139 [*see* INVESTMENT]
  - repairs, drainage, water supply, where, 105, 106, 107
  - wrong, effect of restraint on anticipation on, 268
    - repayment after, does not cure, 142
- life-tenant, not renewing, guilty of, 149, 150
- loan to bank in which trustee partner, 137
- mortgage on deficient security, 140, 141, 142
  - by fraud of solicitor, 142
  - leaseholds, 143
  - life interest, *ib.*
  - judgment, *ib.*
  - Scotch lands, *ib.*
  - second, 142
  - without abstract and new valuation, *ib.*
    - mortgage deed, *ib.*
- neglect to get in trust estate, 87—97
  - [*see* GETTING IN TRUST ESTATE]
  - personal security, 87
  - wasting securities, 91—97
    - money to answer payments is not, when, 88
- to call in good mortgage is not, where, 88, 90
  - equitable debt, *ib.*
- to sue for debt, remedy for, 325
  - where debtor insolvent, *ib.*
- to sue husband on covenant, 87
  - on bond, *ib.*
  - for instalments, 88
    - on bills of exchange in time, 88
- to receive Exchequer Bills from broker, 100
  - deposit from auctioneer is not, *ib.*
- to insure, is not, 100
- to obtain deeds from tenant for life, 226



BREACH OF TRUST—*continued*.

- to register, 89
- new trustees, appointment of less number of, 212
- non-investment of balances, 87
  - by solicitor-trustee, 324
  - relief for, 324
- notice, neglect to give, to insurance office, 89
  - of, invalidates trustee's receipt, where, 129, 130
- payment into Court, where, 276
  - premature, to agent, 100
  - to stranger, 100
- policy, dropping, to secure debt, 89, 326
  - notice of assignment of, neglect to give, 89, 100
- purchase of trust estate, [*see* PURCHASE OF TRUST ESTATE], 182—195]
- relief for, 324
  - injunction, 279
  - unauthorised investment, 324
  - non-investment, *ib.*
    - by solicitor-trustee, *ib.*
  - neglect to sue for debt, 325
    - where debtor insolvent, *ib.*
  - leaving money in trade, *ib.*
  - recovery of money from firm, *ib.*
    - from partners not trustees, *ib.*
    - bankrupt firm, 326
  - account of profit, *ib.*
    - following into hands of firm, 326
  - neglect to keep up policy, *ib.*
  - improvement of other part of estate no excuse for, 327
  - over-payment to tenant for life, *ib.*
  - trustees charged only for what received, *ib.*
  - wilful default, inquiry as to, *ib.*
    - allegations of, 328
    - [*See* WILFUL DEFAULT]
  - ulterior consequences of, liability for, 328
  - representatives, liability of, for, 314, 329
    - though act reparable in lifetime, *ib.*
    - in case of wilful default, *ib.*
- refunding by legatees, 329
- benefit from, not inquired into, 330
- trustees equally liable for, 297, 330
  - c. q. t.* may proceed against all or any of, 330
  - non-acting, liable, *ib.*
- joint and several liability for, *ib.*
  - proof in bankruptcy, 219, 330
- action for, parties to, 330, 331

BREACH OF TRUST—*continued.*

- order, form of, in, 331
- contribution between trustees made liable for, 331
  - as to costs, 332
  - parties to action for, *ib.*
- indemnity does not reach, 238
  - between co-trustees not directed where no breach of trust, *ib.*
  - secus*, where breach of trust, *ib.*
  - by stranger benefited by, *ib.*
- debt created by, nature of, 332, 333
  - as between trustees, 333
- concurrence of *c. q. t.* in, *ib.*
  - inquiry as to, *ib.*
  - c. q. t.* must have full knowledge to be bound by, 334
  - c. q. t.* under disability, *ib.*
    - feme covert*, *ib.*
  - separate estate bound by, *ib.*
  - extent of liability on, 335
- benefit of, taken by *c. q. t.* bars right to complain, 334
- acquiescence in, bars right to complain, 306, 334
  - [See STATUTE OF LIMITATIONS]
- impounding interest of *c. q. t.*, 335
  - right of, cannot be waived, *ib.*
  - beneficial interest of trustee, *ib.*
    - annuity, 336
    - income, *ib.*
    - not legal life estate, *ib.*
    - share as next of kin, *ib.*
- interest on, not chargeable, *ib.*
- release of, 336
  - when good, *ib.*
  - by infant, *ib.*
    - just of age, *ib.*
  - feme covert*, 337
- costs of action for, *ib.*
  - order for, against all trustees, *ib.*
  - concurring *c. q. t.* to pay, *ib.*
  - limited to costs caused by, *ib.*
- sale, unnecessary, 111
  - at undervalue, 111, 112
  - favouring purchaser, *c. q. t.*, or life-tenant, on, 111, 112
  - advertisement, improper, of, 112
  - buying in at, without fixing reserve, *ib.*
  - to co-trustee at reserve, without leave, *ib.*
  - delay of, after reasonable offer, 114, 115
  - refusing to make, after request by *c. q. t.*, 114

BREACH OF TRUST—*continued.*

- joint, with other property, when, 118
- land without timber, *ib.*
- timber without land, *ib.*
- mortgage, instead of, 122, 123
- instead of mortgage, 124
- of realty where personalty sufficient, 129
- of stock, where wrongful, remedy for, 285
  - by co-trustee, giving power of attorney to, for, 17
- separate estate is liable for, 265
  - unless restrained from anticipation, *ib.*
- solicitor, allowing receipt of trust-money by, 18
  - except in ordinary course, *ib.*
  - to keep money before required, *ib.*
- selecting fraudulent, 19
  - though a co-trustee, *ib.*

## BROKER,

- securities should not be left with, 100
- liability of trustee for act of, indemnity against, 237
- trust money may be followed in hands of, 300

BUILDING [*see IMPROVEMENTS*]

- power of, in trustees,
  - houses, 105
  - cottages, *ib.*
  - farm buildings, *ib.*
- payment for, out of fund in Court, *ib.*
  - with money to be invested in land, *ib.*
  - with accumulations, *ib.*
- new buildings, or re-building, 105, 106
- making additions to houses, 105
- villa on land subject to trust for sale, 106
- sale for, on fee farm rent under Settled Estates Act, 120
  - cost of preparing land before, *ib.*

BURDEN OF PROOF [*see EVIDENCE*]BUSINESS [*see TRADE ; PARTNER*]

- income of fund invested in, right of tenant for life to, 94

BUYING IN [*see AUCTION*]

## CALLS,

- trustee for company not liable for, 140
- lien of tenant for life for, *ib.*

CALLS—*continued*.

- trustee liable for, *ib.*
  - if registered, *ib.*
- indemnity to, for, *ib.*
  - by married woman, 262

## CAPITAL,

- advancement out of, without power, 178
  - [see ADVANCEMENT]
- maintenance out of, 176
  - inquiry as to, *ib.*
- of separate estate bound though *feme* have life estate and a power, 260
  - where power by will only, *ib.*
  - where gift over in default of appointment, 261
- separate use limited to, as well as income, where, 252

## CASH

- under control of Court [see INVESTMENT]

## CERTIFICATE

- of shares, indorsement of transfer on, 29
- interest on sum found by Chief Clerk's, not given, where, 284

## CESTUI QUE TRUST,

- where, to receive rents, legal estate does not pass, 2
- secus* where trustees to receive them, 3
  - or give receipts for them, *ib.*
  - or where separate use, *ib.*
- is person to declare trust under s. 7 of Statute of Frauds, 25
- request of, trust for purchase on, 146
- influence of, over acceptance of offer to buy, 112
- request of, to trustees to sell, 113, 114
  - as to sale of goodwill, 90
- concurrence of, in conveyance, 121
  - on sales by Court, *ib.*
- covenant by, *ib.*
- may call on trustees to renew leases, 148
- trustee consulting, as to exercise of discretion, 102
- information to, trustees bound to furnish, 229
- disagreement of, with trustee, no ground for removing trustee, 216
- refusing to let trustee retire, 206
- may be trustee, 211
  - husband of, *ib.*
  - relative of, where, *ib.*
- payment to, by trustee, 230—236
  - refusal by trustees of, 230
    - protection of Court on, *ib.*
    - rights to costs on, *ib.*

CESTUI QUE TRUST—*continued.*

- of appeal by trustees, *ib.*
  - bankruptcy
  - trustee, *ib.*
  - official liquidator, *ib.*
- untenable grounds of, *ib.*
- from *bonâ fide* ignorance, *ib.*
  - of Scotch law, *ib.*
- postponement of, discretion as to, 231
- wrong, recovery of, *ib.*
  - as against assignee, *ib.*
- refunding legacies, 231
  - excessive payment, *ib.*
  - where estate wasted, *ib.*
  - overpayment in suit, *ib.*
  - income overpaid to tenant for life, *ib.*
- misrepresentation of interest of, by trustee, 232
- counsel, on advice of, *ib.*
  - costs, *ib.*
- personal representative of deceased, *ib.*
- appointees under general power, *ib.*
  - by *feme covert*, *ib.*
  - trustees for, *ib.*
  - fraud, notice of intended, by, 233
- appointment manifestly good, where, *ib.*
  - refusal to pay on, *ib.*
  - fraud on power, where, *ib.*
  - default of evidence of, before, *ib.*
- receipt for [see RELEASE], 233
- primâ facie* title, on, *ib.*
- incumbrancer, proof of title by, *ib.*
- trustee for, *ib.*
- small sums from intestate's estate, 234
- right to, declared by Court under 15 & 16 Vict. c. 86, s. 50, *ib.*
  - without consequential relief, *ib.*
  - future, not declared, *ib.*
  - of persons under disability, *ib.*
  - notice of assignments, after, *ib.*
  - how assignee secured, *ib.*
  - new trustees need not inquire as to, *ib.*
  - power of attorney, evidence of validity of, 235
    - liability where forged, *ib.*
    - where donor dead, *ib.*
    - given by tenant for life, *ib.*

CESTUI QUE TRUST—*continued*.

- dissolution of marriage, effect of, on right to, 235
- presumption of death, on, *ib.*
  - after seven years, *ib.*
- Crown, where entitled in default of next of kin, 236
- release for [*see* RELEASE]
- right of, to possession [*see* TENANT FOR LIFE]
- conveyance of legal estate by trustee to [*see* CONVEYANCE]
- title-deeds, custody of, right to [*see* TITLE-DEEDS]
- production of counsel's opinion to, 227
- must join in proof in bankruptcy, when, 16
- proof by, against bankrupt trustee [*see* BANKRUPTCY]
- indemnity by, to trustee for calls on shares, 140
- what constitutes, under trust deed for creditors, 37
  - where deed takes effect on death of settlor, 141
- voluntary trusts, title of, under, 28, 30
- cannot compel completion of voluntary trust by settlor, 31
  - by representatives, *ib.*
- remedy of, under voluntary trust, 36
- purchase by trustee from [*see* PURCHASE OF TRUST ESTATE]
- consent of, to trustee buying trust estate as agent for stranger, 182
- concurrence of, in breach of trust [*see* BREACH OF TRUST]
- following trust estate by [*see* FOLLOWING TRUST ESTATE]
- possession of, not adverse to trustee, 314
  - of one, not adverse to other, 315
- barred, trustee barred if, *ib.*
  - if trustee barred, *ib.*
- marriage of, consent to, by trustees [*see* CONSENT]
- interest of, extent of, to obtain injunction, 114
- rights of, not determined on advice petition, 108 [*see* ADVICE PETITION]
- sui juris*, action by trustee where, 102
- liability of, for costs of specific performance action, 122

## CESTUI QUE VIE,

- renewal, where life-tenant a, 148

## CHARGE

- of debts, effect of, on passing legal estate, 2, 3, 4
- of debts or legacies prevents trust estates passing by general devise, 21
- payment by trustees for sale of legacy alleged to be a, 101
- on leasehold bequeathed, remains on renewed lease, 77
- remains on fee bought when renewal impossible, 78
- tenant for life to keep down interest on, when, 96
- possession of *c. q. t.* where, to be kept down, 222

CHARGE—*continued.*

- power to, not to be accelerated by surrender of life estate, 116
- of portions [*see* PORTIONS]
- on infant's freehold for past maintenance, 176
- for improvements under 27 & 28 Vict. c. 114, 107

## CHARGING ORDER

- on fund in Court, assignee should obtain, 292

## CHARITY,

- trusts for, prevent trust estates passing by general devise, 21
- declaration of trusts for, must be in writing, 26  
[*see* STATUTE OF FRAUDS]
- secret trust for [*see* SECRET TRUSTS]
- uncertain purposes of [*see* ILLEGAL TRUSTS]
- majority of trustees of, can bind minority, 15
- trustees of, order for payment to all or any two of, 16
- mortgage by, 134
- new trustees of, 213
- express trust under Statute of Limitations, 311
- failure of, right of Crown, if no next of kin, 243
- foreign [*see* FOREIGN PROPERTY]

## CHATELS,

- not within Act of Elizabeth, 36
- executory trust of, by reference to trusts of land, 51
  - vesting in first tenant in tail how prevented, *ib.*
  - "so far as rules of law and equity permit," effect of, *ib.*
  - to take jewels as heirlooms, *ib.*

## CHATTEL INTERESTS,

- legal, when taken by trustees, 7
- legal estate *pur autre vie* not cut down to, 8

## CHATELS REAL,

- doctrine of notice not applied to, 291

## CHEQUE,

- sending money by, to co-trustee, 17
- erasure of crossing on, by co-trustee, *ib.*
- voluntary trust of, 20
- handing, part of separate estate, to husband to cash, 249
- tracing money, effect of, on difficulty of, 301

CHIEF CLERK [*see* CERTIFICATE]

## CHILD,

- en ventre sa mère*, accumulation during minority of, 153
  - when entitled to portion, 159
- maintenance out of legacy to, 171

CHILD—*continued*.

- where direction to accumulate, 173
- by other marriages, right of, to portions, 159
- future, right of, to portion, *ib.*
- unborn, accumulation during minority of, not allowed, 154  
how far good, *ib.*
- “younger,” meaning of, 157
  - becoming eldest son, 158
  - eldest son becoming, *ib.*
- illegitimate [*see* ILLEGITIMATE CHILDREN]

## CHILDREN,

- limitation to, in articles, imports joint tenancy, 46

## CHOSE IN ACTION,

- assignment of [*see* ASSIGNMENT—NOTICE]

## CLAIM,

- statement of [*see* STATEMENT OF CLAIM]

## CLASS,

- donee and children under precatory trust taken as a, 57

## CLAYTON'S CASE,

- [*see* FOLLOWING TRUST ESTATE]

## COLLATERAL SECURITY,

- promissory note, as, to perform voluntary trust, 34
- mortgage of life estate with, 143

COLLUSION [*see* FRAUD]

- trustee liable for, notwithstanding indemnity, 238
- purchase by, from trustees, 183
- to turn life-tenant out of possession, 222

## COLONY,

- land in, jurisdiction as to, 244

## COMMISSION,

- executor acting as agent cannot charge, 197
- of auctioneers where trustee partner, *ib.*
  - mortgagee for receiving rents, *ib.*
  - of colonial estate, *ib.*
- of trustees of West Indian estates, 199
  - administrator-general of Bengal, *ib.*
  - Madras and Bombay, *ib.*
- to mortgagee on rents, 201
- army, advancement for purchase of, 180

## COMMITTEE,

- remuneration to, 198
- per centage on rents allowed to, where, 202



## COMMUNICATION

of voluntary trust to *c. q. t.*, 33

## COMPENSATION,

decision of judge as to, under Vendor and Purchaser Act, 145

## COMPOSITION,

trustees not liable for not accepting, 88

attachment of trustee after, 278

COMPOUND INTEREST [*see* INTEREST]

## COMPROMISE

power of trustees to, 101

release of rights, by trustees, in order to, 89

trustees not liable for not making, 88

of claims before selling under trust, 120

petition for advice as to, 110

restraint against anticipation does not avoid married woman's,  
268

## CONCURRENCE

in sale, by co-trustee, 114

of trustees in advancement, 181

of *c. q. t.* when trustees cannot give receipt, 121

in breach of trust [*see* BREACH OF TRUST]

## CONDITION

as to vesting of portions, 162

precedent, to power of advancement, 180

consent to marriage, 104

of marriage with consent, effect of, on sinking of portions, 168

of sale [*see* AUCTION—SALES BY TRUSTEES]

reference as to title having regard to, 144

depreciatory, injunction where, 279

## CONDUCT

disclaimer by : non-interference, 10, 11

consent by, to marriage, 104

## CONFIDENCE

words of, create trust, when, 52

## CONFIRMATION

of purchase of trust estate by trustee

[*see* PURCHASE OF TRUST ESTATE]

## CONFORMITY

receipt for, liability after [*see* CO-TRUSTEE]

## CONSENT

- to investment [*see* INVESTMENT]
- of *c. q. t.* to sale, gives power to nominate purchaser, 223
  - refusal of trustee to convey to nominee, where, 113
- to sale, petition for advice as to, 109
  - after death of *c. q. t.*, 118
  - parol, *ib.*
  - antecedent, *ib.*
  - of "heir-at-law of A.," 119
  - after alienation, *ib.*
    - bankruptcy, *ib.*
  - of purchasers of life interest, *ib.*
  - of protector after entail barred, *ib.*
- to sale, by life-tenant does not prevent purchase by him, 188, 189
- effect of, on duty to sell wasting property, 94
- sale without, under trust to divide, 119
- to marriage, by trustees, where condition precedent, 104
  - all should join, where, *ib.*
  - survivors, where, *ib.*
  - in writing, *ib.*
  - by conduct, *ib.*
  - presumed from lapse of time, *ib.*
  - by general permission, *ib.*
  - conditional, *ib.*
  - refusal of, *ib.*
  - fraud on, *ib.*
  - withdrawal of, *ib.*
  - subsequent, 105
  - previously given by settlor, *ib.*
- effect of disclaimer on, 12
  - on sinking of portions, 168
  - vesting of portions, 162
- to maintenance out of presumptive shares of infants, 172
- to advancement out of contingent interests, 178
- to trustee retiring without appointing new trustee, 206
- of husband to will of married woman, 259
- of wife to transfer of separate estate to husband, 248
- of trustees to alienation of separate estate, not required, 258
- in Court of *feme covert* revocable, 32
- of *c. q. t.* necessary to leave property in order and disposition of bankrupt trustee, 208

## CONSIDERATION

- meritorious, where trusts postnuptial, 32
  - under Acts of Elizabeth, 36
- of marriage, position of remainderman as to, 32

CONSIDERATION—*continued*.

- in family arrangements, 33
- ex post facto*, 36
- on sale by trustees [*see* SALES BY TRUSTEES]
- illegal or immoral, bars right to rely on Statute of Frauds, 26
- where absence of, is fraud against creditors and purchasers, 35
- resulting trust from want of [*see* RESULTING TRUST]
  - nominal, 61
- advanced in equal or unequal shares
  - [*see* RESULTING TRUST, 69—71]
- false statement of, in conveyance to nominee, 67
- covenant not to sue, for creditors' deed, 38
- antecedent debts, for creditor's deed, *ib.*

CONSIGNEE.

- lien of, on West Indian estate, 199

CONSIGNMENT,

- commission on, for West Indian estate, *ib.*

CONSOLS,

- investment in [*see* INVESTMENT]
- investment of balances in, 87
- restraint on anticipation prevents transfer out of Court of, 268
- mortgage, investment on, instead of, remedy for, 324

CONSTRUCTIVE NOTICE [*see* NOTICE]

CONSTRUCTIVE TRUSTS, 72—78

- definition of, 72
- limits of, *ib.*
- after contract for sale, *ib.*
  - devise of trust estates passes estate sold, *ib.*
  - liability of vendor for rents, waste, &c., 73
- on tenant for life receiving money for withdrawing opposition to Bill, *ib.*
- on renewal of leases by trustees, &c., in their own name, 73—78
  - after refusal of renewal to *c. q. t.*, 73
    - by co-trustees to join, *ib.*
  - absence of fraud, 74
  - collusive forfeiture after, *ib.*
  - by executor *de son tort*, *ib.*
  - by administrator, *ib.*
  - by executor, *ib.*
    - where testator overheld, 74
    - where testator tenant at will, *ib.*
  - where old lease nearly expired, *ib.*

CONSTRUCTIVE TRUSTS—*continued.*

- new lease granted before expiry, *ib.*
  - contains additional lands, *ib.*
  - rent and term identical, *ib.*
- by tenant for life, 75
  - where settlor is life-tenant, *ib.*
  - is not exercise of general power, *ib.*
  - reversionary leases granted to, *ib.*
  - where no obligation to renew, *ib.*
  - [TRUSTS FOR RENEWAL]
  - sale of right to renew, *ib.*
  - of original lease purchased by him, *ib.*
  - rights of remaindermen not saved as on express trust, *ib.*
  - [see STATUTE OF LIMITATIONS]
- by mortgagees, 75, 76
- by mortgagor,
  - benefit of, enures to mortgagees, 76
- by joint lessee,
  - benefit of, enures to all, *ib.*
  - where one an infant, *ib.*
- by partners,
  - of partnership premises, *ib.*
  - term of partnership immaterial, *ib.*
  - where renewal by managing partner, *ib.*
  - in case of mining partnership, *ib.*
  - acquiescence by executor of deceased partner, *ib.*, 77
  - claim remains till business wound up, 76
- purchase of fee by partner, *ib.*
- premium obtained for taking lease, *ib.*
- renewed lease remains subject to charges of debts, &c., 77, 78
- purchaser with notice of renewed lease liable, *ib.*
- by person entitled to leasehold to himself and heirs of his body, *ib.*
- renewal granted to stranger, *ib.*
- new lease subject to equities, 77
- acquiescence, *ib.*
- form of decree to enforce, *ib.*
  - mesne profits, 78
  - rack-rent leases saved, *ib.*
  - indemnity against covenants, *ib.*

CONSTRUCTIVE TRUSTS—*continued.*

- lien for expenses, *ib.*
  - tenant for life, *ib.*
  - improvements, *ib.*
- where fee purchased, charges on old lease to be kept up, *ib.*
- executor acting in a business without necessity where, 310
- in vendors after contract pass by general devise, where, 21
- in guardian, 198
- within Trustee Acts, 210
- no profit to be made under, 196
- of profits made by trustees, &c., *ib.*
- relief against purchaser with notice not founded on, 293
- not saved by s. 25 of Statute of Limitations, 307

## CONTINGENT INTERESTS

- to be got in [*see* REVERSION]
- advancement out of, 178
  - consents to, *ib.*
- plaintiffs having, may obtain compulsory payment into Court, 275

## CONTINGENT LEGACIES,

- fund set apart for, tenant for life takes income of, 97
- payment to answer, into bank, 98
  - loss of, *ib.*
- maintenance out of, 171, 172

## CONTINGENT REMAINDERS,

- trust to preserve, after legal life estate, requires legal fee, 9
  - after power of appointment, *ib.*
- trustee to preserve, may buy trust estate, 183
- destruction of, by trustees, remedy for, 295

## CONTRACT,

- after, vendor is constructive trustee for purchaser, 72
- for sale, constructive trust in vendor after, passes by general devise, 21
  - not under "securities for money," 22
  - passes under devise in trust for sale, *ib.*
- private, sale by trustees by, 111
- on purchase by trustees need not exclude Vendor and Purchaser Act, 144
- by trustees, decision as to, under Vendor and Purchaser Act, 145
- specific performance of [*see* SPECIFIC PERFORMANCE]
  - by and against voluntary settlor, 36
- feme covert* not personally bound by, 263
- by married woman [*see* SEPARATE ESTATE]

CONTRACT—*continued*.

- between trustee and *c. q. t.* for remuneration, 201
  - valid if without pressure, *ib.*
  - separate advice as to, *ib.*
- to end fiduciary relation to enable trustee to buy trust estate, 182
- between parties is necessary to give jurisdiction as to foreign property, 245

## CONTRARY INTENTION,

- to prevent trust or mortgage estates passing by general devise, 21—24
  - [*see* DEVISE OF TRUST ESTATES]

## CONTRIBUTION

- between trustees liable for breach of trust
  - [*see* BREACH OF TRUST]

## CONTROL,

- money not to be placed in bank so that trustees lose, 99
- separate use where property to be under, 255

## CONVERSATIONS,

- proof of trust by, 33

## CONVERSION,

- wrongful, by trustee [*see* FOLLOWING TRUST ESTATE]
- of securities [*see* SECURITIES]
- of wasting securities [*see* GETTING IN TRUST ESTATE], 91—97
- trust for, where mortgage allowed by, 122, 123
  - [*see* MORTGAGE]
- of land into money in favour of alien, 244

CONVEYANCE [*see* PURCHASE-MONEY]

- of outstanding legal estate, 122
- where legal estate passes by, 8, 9
- disclaimer by, 10
- of trust estate purchased by trustee in name of child, 183
- to joint purchaser [*see* RESULTING TRUSTS, 69—71]
- voluntary, in trust, not to be by deed poll, 30
  - of trust estate, liability of grantor under, 295
- by one to himself and another under s. 21 of St. Leonards' Act, 213
- of real estate to new trustees by one deed, *ib.*
- by trustees for separate use to married woman while *discoverte*, 251
- by trustees of legal estate to *c. q. t.*, 223
  - refusal of: costs, *ib.*
  - on opinion of counsel, 224
  - to grantee of equitable estate, 223

CONVEYANCE—*continued*.

- to nominee of *c. q. t.*, 223
- to *c. q. t.* having apparent title, *ib.*
- by direction of wife entitled to separate use, *ib.*
- inquiries before, as to title of *c. q. t.*, 224
- recitals incorrect, execution of, where, *ib.*
- to tenant in tail, *ib.*
- of various parts at different times, *ib.*
- by new description, *ib.*
- at suit of purchaser, 224
- by bare trustee, 224, 225
- by heir of deceased vendor, *ib.*
  - where heir an infant, 225
- notice before, sufficient against purchaser, 299

CONVICT [*see* FELONY]

## COPYHOLD,

- not within Statute of Uses, 1
- vesting legal estate in, in trustees, *ib.*
- devise of, to A. upon trust for B., *ib.*
  - to A. to the use of B., *ib.*
  - to A. to transfer to B., *ib.*
- duration of legal estate in, 2
- on devise in trust to transfer, trustees take no legal estate, 7
- trust of, must be declared by writing, 25
  - [*see* STATUTE OF FRAUDS]
- enfranchisement of, conveyance on, to trustees, 122
- trusts of money received for enfranchisement of, 73
- mortgage on, by trustees [*see* INVESTMENT]
- for lives, purchase of by, father in name of son, 62
  - [*see* RESULTING TRUSTS, 61—66]
  - putting in own life, *ib.*
  - custom to contrary bad, 63
  - investment in, 146

## CORONER,

- trustee has right to vote for, 222

## CORPORATIONS,

- mortgage by, 134

CORPUS [*see* CAPITAL]

## COSTS,

- of consulting counsel as to disclaimer, 11
- where action caused by refusal of trustee to act, *ib.*
- of solicitor-trustee, 197 [*see* SOLICITOR]
- provision that solicitor-trustee may charge, 199

Costs—*continued*.

- out of pocket [*see* SOLICITOR—ALLOWANCES]
  - to mortgagee acting as own solicitor, 197
- of attendances to pay premiums, 200
  - auctioneers, *ib.*
  - legates, *ib.*
  - creditors, *ib.*
- of investment in land by trustees, 147
- trustees may charge, of sale, 201
  - accountant, *ib.*
  - rent-collector, 202
- extra, recovery of, in subsequent suit, *ib.*
- of trustees where sale delayed, 115
  - apportionment of, *ib.*
- of raising portions, 165
- separate estate liable for, 262
- one set of, where trustees sever [*see* DEFENCE], 16
  - paid to innocent trustee, 16
- where trustees sever defence, 16
  - apportionment of, where trustees sever, 16
- of appointment of new trustees out of trust estate, 215
  - of attested copies of trust deed not included in, 215
- of new trustee's appointment where old trustee retires capriciously, 205
- of appointment of new trustee where executor declines to act in trust, 206
- of action by trustees, where all *cs. q. t. sui juris*, 102
- of action for breach of trust, 337 [*see* BREACH OF TRUST]
- of receivership payable by life-tenant, 274
- of specific performance suit, liability of trustees for, 122
- where trustees refuse to convey legal estate, 223, 224
- of action to compel trustees to transfer legal estate, 206
- of action against trustee refusing to furnish accounts, 228, 229
- where trustees refuse to pay to *c. q. t.*, 230
  - from ignorance of law, *ib.*
- appeal of, by trustees, *ib.*
- where trustee wrongfully buys trust estate, 193
  - delay and acquiescence, where, *ib.*
- contribution between trustees as to, 332
- mortgage to secure, 190

## Co-TRUSTEE,

- acts of, liability of trustee for, 238—240
- conformity, receipt given for, for money received by, 238
  - where not provided for by settlement, 239
  - where trustees jointly and severally bound, *ib.*
  - act must be necessary, 239



Co-TRUSTEE—*continued*.

- onus* on non-receiving trustee as to receipt by, 239
- distinction between executors and trustees, 238
  - where solicitor-trustee receives money, *ib.*
- laches of trustee by which funds get into hands of, *ib.*
- allowing debt due from, to remain unpaid, *ib.*
  - money to remain in trade, *ib.*
  - becoming insolvent before money got in, *ib.*
- executor upon trust, liability of, for, 240
- investment by, proof of, *ib.*
- custody of securities by, *ib.*
  - bonds transferable by delivery, *ib.*
- equitable mortgage by, *ib.*
- sale by, to purchaser without notice, *ib.*
- liable for rents received by co-trustee, 15
  - dividends, *ib.*
- accounts kept by, liability of trustee for, 228
- disclaimer by release or conveyance to, 10
- delegation to, 17
- arrangement with, that one shall act, bad, *ib.*
- stealing money sent in ordinary course by cheque, *ib.*
  - by crossed cheque, *ib.*
- misappropriation of trust fund handed by other trustees for investment, *ib.*
  - of sale moneys of stock sold under power of attorney from the trustee, *ib.*
- payment to an agent for the rest, 19
- must concur in sale, 114
- passive, bound by sale, *ib.*
  - delay in selling, 115
  - though a minor, *ib.*
- loan to, 138
- advancing trust money on property of, 144
- who is solicitor, acting for, on retainer of trustees, 197
- trustees liable for fraud of solicitor, though a, 19
- purchase by trustee from, of trust estate, 183
- liable for breach of trust though received no benefit, 330
- injunction by trustee against, 279

## COTTAGES,

- power to build, 105
- repair, *ib.*

## COUNSEL,

- costs of opinion of, as to disclaimer by trustee, 11
- employment of, to draw conditions of sale, 120

COUNSEL—*continued*.

- trustees may charge for opinion of, 201
- advice of, does not excuse wrong payment to *c. q. t.*, 232
  - costs where trustee acts *bonâ fide* on, *ib.*
- purchase by, of property as to which they have advised, 191
- gifts to, *ib.*
- executory trust to settle as, shall advise, 48

## COUPONS,

- apportionment of, petition for advice as to, 109

## COURT

- will declare rights of *c. q. t.* without consequential relief, when, 234
- will relieve trustee from unexpected questions, 205, 206
- opinion of, petition for [*see* ADVICE; PETITIONS]
- control of, over trustees' discretion [*see* POWER]
- payment into, under Trustee Relief Act, 175
  - order for, money ought not to be paid into bank after, 98
- fund in [*see* FUND IN COURT]
- where, orders dividends to be paid to one of several trustees, 15
  - payment to trustees for time being, 16
- may appoint new trustees though power in settlement, 203, 204
  - where none appointed by testator, *ib.*
  - where all trustees refuse to act, *ib.*
  - not where trustees willing to act, *ib.*
- may increase number of trustees notwithstanding Cranworth's Act, 203
- title deed, order to bring, into, 226

## COVENANT,

- by trustees [*see* SALE BY TRUSTEES]
- by *c. q. t.* [*see* SALES BY TRUSTEES]
- by trustees, effect of disclaimer of one upon, 12
- under seal, breach of trust has same effect where trustee executes, or not, where, 14
- of married woman [*see* SEPARATE ESTATE]
- for production [*see* PRODUCTION]
- not to sue, effect of, in trust deed for creditors, 38
- voluntary, to transfer stock or shares, 30
  - surrender copyholds, *ib.*
  - enforcement of, 279
- by husband in marriage settlement, enforcement of, 87
  - where money payable by instalments, 88
- to pay portions, effect of, on vesting, 160
- leasehold, liability on, petition for advice as to, 110

COVENANT—*continued*.

- of renewed lease, indemnity of constructive trustee against, 78
- to insure by testator, liability of trustees upon, 100
- neglect of trustees to enforce, remedy for, 325
- to buy land, presumption of purchase being in performance of, 305
- to settle, is express trust, when, 308

COVERTURE [*see* MARRIED WOMAN ; SEPARATE ESTATE]CRANWORTH'S, LORD, ACT [*see* STATUTES]

## CREDITORS,

## trusts for, 37—42

## I. irrevocable, 37—40

## II. revocable, 40—42

- I. necessity of execution or assent by, 37
  - where trustee is solicitor for creditors, 38
  - where trustee is a creditor, *ib.*

assent by acquiescence, 37

creditor must not stand by, *ib.*

time not of essence of, *ib.*

power to trustees to enlarge, 38

where covenant not to sue, *ib.*

refusal of creditors to come in, 37

setting up claim adverse to, 38

retainer by trustee, no right of, under, *ib.*

assent must be before debtor's bankruptcy, *ib.*

assent, implied, *ib.*

where trustee is a creditor, *ib.*

extend to what debts, 39

not to debts barred at death of testator, *ib.*

where trusts to pay debts of another, *ib.*

time stops at the death, *ib.*

delay in enforcing trust, *ib.*

where executors ought to pay, *ib.*

direction to pay barred debts, *ib.*

prevents lapse, *ib.*

receipt for, 40

debt unclaimed, *ib.*

trustees under, may require creditors to prove debts, 40

getting back estate after administration decree, *ib.*

power of selection by, *ib.*

secret preference, *ib.*

execution of, with notice of action by a creditor, *ib.*

secured creditors under, *ib.*

new trustees of, appointment of, *ib.*

CREDITORS—*continued*.

- II. assignment upon, uncommunicated and unacted upon, is revocable, *ib.*

where request of debtor required, 41  
 retainer by trustee of debt to him, *ib.*  
 death of settlor, effect of, *ib.*  
 rights of *c. q. t.*, where trust takes effect on death, *ib.*

refusal of trustees to allow opposing creditor to come in, 41

action by trustee under, to get in assets, *ib.*

extent of principle as to, 42

execution, can buy debtor's property, 188

judgment, within Act of Elizabeth, 36

settlements in fraud of, under 13 Eliz. c. 5, 35

express trust for, within Statute of Limitations, 309

of trustee not entitled to trust property, 208

not damnified by merger of portion, 168

rights of, against separate estate [*see* SEPARATE ESTATE]  
 of deceased *feme covert*, 251

## CRIMINAL LIABILITY,

of trustee, under Larceny Act, 281, 282

leave of Chancery Division to enforce, 281, 282

CROSSED CHEQUE [*see* CHEQUE]

## CROWN,

trust decreed against, on petition of right, 242

prizes, trust of, declared by, *ib.*

is revocable, *ib.*

pension from, trust of, how proved, *ib.*

peerage, no trust of, as granted by, *ib.*

will, right of Sovereign to make, *ib.*

land, trust of, declared by, by patent, *ib.*

grant of, to, by deed enrolled, 243

Statute of Frauds, bound by, 26, 243

escheat to, none of equitable fee, 243

escheat or forfeiture to, none of legal estate, *ib.*

on felony, abolished, *ib.*

failure of next of kin, right of, on, *ib.*

right of executor, *ib.*

evidence as to, 236

charitable trust, where no next of kin, 243

widow's right to a share on, 244

debts, &c., saved, on, *ib.*

discovery of next of kin, repayment by, on, *ib.*

CROWN—*continued*.

illegitimate children, claim of, entertained by, 244  
 aliens, Crown entitled to land of, under trusts before Naturali-  
 zation Act, 1870, *ib*.

## CURTESY,

out of equitable estate, husband has, though settled, 270  
     to separate use, 271  
     estate tail, wife may bar, and oust, *ib*.  
     adverse possession, when it bars, *ib*.

## CUSTODY,

maintenance after removal from father's, 174  
 of trust deed by person named trustee, not acceptance of  
     trust, 14  
 of deeds [*see* TITLE DEEDS]  
 of trust property [*see* SHARES; BANK; ROBBERY; FRAUD;  
     TRUSTEES; BREACH OF TRUST]

## CUSTOM,

to renew lease, effect of, on duty of life-tenant to renew, 148  
 that purchaser of lifehold copyhold to take beneficially, bad,  
     63  
 gavelkind [*see* GAVELKIND]

## DAUGHTER,

eldest [*see* PORTIONS]  
 taking portion on failure of male issue, 161  
 infant, direction to settle on marriage of, void, 85

## DEATH

of trustee, Court prevents failure of trust by, 103  
     survivor may exercise discretionary power of sale,  
     on, 122  
     consent to marriage by survivors, on, 104  
     without appointing new trustees, 203  
     in testator's lifetime, 205  
 of *c. q. t.*, effect of, on power of attorney, 235  
     payment to representative on, 232  
 of infant to be advanced, effect of, 180  
 of married woman, effect of, as to separate estate [*see* SEPA-  
     RATE ESTATE]  
 of settlor, acting on power of attorney after, 34  
 revocation of voluntary trusts by, where settlement not com-  
     pleted, *ib*.  
 presumption of, 235  
     after seven years, *ib*.  
     evidence as to, *ib*.

DEBENTURES [*see* INVESTMENT]

investment in, petition for advice as to, 109

## DEBTS,

- charge of, effect of, on passing legal estate, 2
- trustees to pay, or debts and legacies, take legal fee, 6
  - unless a less estate is intended, 7
- power of sale to pay, trustees retain legal fee taken for, 6
- charge of, prevents trust estates passing by general devise, 21
- resulting trust where land devised to pay, not required, 58
- charge of, power to give receipts where [*see* RECEIPTS OF TRUSTEE]
- trust to pay, when it gives estate *pur autre vie* with chattel interest added, 7
  - authorises sale or mortgage, 101, 113
- sale of timber without land to pay, 118
- payment of, out of income of first year, 96
- discretion as to mode of payment of [*see* DISCRETION]
- sales by Court to pay, 155
- term for raising sinking fund to pay, *ib.*
- "of another person" under Thellusson Act, *ib.*
- accumulation for payment of, not limited by Thellusson Act, 153
  - not contemplated by testator, 154
  - insurance fund to serve other part of devised property how construed, 155
- portions postponed to, 161
- remain charged on renewed lease, 77
- discretion as to calling in, 88
- by co-trustee, not suing for, effect of, 239
- dropping policy to secure, liability of trustees for, 89
  - [*See* POLICY]
- trustees not liable for not compounding, 88
- getting in doubtful, remuneration for, 196
- right of Crown where no next of kin, subject to, 244
- proof of, all trustees must join in, 15
  - except in special cases, 16
- when *c. q. t.* must join in proof of, *ib.*
- purchase of, in bankruptcy, 188
- imprisonment for [*see* ATTACHMENT]
- assignment of [*see* NOTICE]
- distinction between specialty and simple contract, abolished, 14
- separate estate bound by [*see* SEPARATE ESTATE]
- before marriage, liability of husband for, 250, 263
- payment of, advancement for, 178
  - of husband, 179
- husband's, separate estate not liable for, 247, 262

DEBTS—*continued*.

where separate estate charged with, 263  
 barred [*see* LIMITATIONS, STATUTE OF]  
 barred at death of testator not revived by trust to pay debt, 39  
 kept alive by acknowledgment, 315  
 charge of, creates no express trust, 311  
 joint, share of, goes to executors of deceased mortgagee, 69  
 interest on, right to, unaffected by delay in sale, 115  
 retainer of, trustee has no right of, under creditor's deed, 38  
 nature of, created by breach of trust, 220, 332, 333

DEBTOR [*see* ATTACHMENT]

trust created by, for creditors [*see* CREDITOR]  
 injury to credit of, no excuse for not suing, 88  
 policy on life of, liability of trustees for dropping, 100  
 execution creditor may buy property of, 188

## DECLARATION

against dower, 269, 270

## DECLARATION OF TRUST

under s. 7 of Stat. of Frauds, 25 [*see* STATUTE OF FRAUDS]  
*parol*, of personalty, 33  
 evidence of intention to make, *ib.*  
 voluntary imperfectly created not construed as, 27, 29, 30 [*see*  
 VOLUNTARY TRUSTS]  
 informal will, not construed as, 34  
 intended but not made, resulting trust where, 60  
 absence of, on purchase in stranger's name, 67  
     when made with borrowed money, 68  
 of equitable estate not void by getting in legal estate, 35  
 consent in Court of *feme covert* to transfer to husband is not, 32

## DECREE,

form of, to enforce constructive trust of renewed lease, 77  
 to charge separate estate, 264

## DEED

executory trust in [*see* EXECUTORY TRUST]  
 voluntary, against intention, cancelled, 31  
 retention of, by settlor, 34  
 production of by executors of settlor, 35  
 revocation by tampering with seals of, *ib.*  
 will no satisfaction for gift by voluntary, *ib.*  
 voluntary trust of, 30  
 alienation by, of separate estate [*see* SEPARATE ESTATE]  
 disclaimer by, most effectual, 10  
 validity of, not decided under Trustee Act, 215

DEED—*continued*.

appointing new trustees, where only one, 213  
stamp on, *ib.*

## DEED POLL,

voluntary trust by, 30

## DEEDS

trustees' covenant to produce, 121  
production of [*see* TITLE-DEEDS]  
retainer of, 145

DE FACTO TRUSTEE [*see* TRUSTEE DE FACTO]

## DEFAULT,

wilful [*see* WILFUL DEFAULT]  
liability of trustees for, of person to whom they delegate  
trust, 17

## DEFENCE,

trustees should not sever, 16  
except in special cases, *ib.*  
costs where they sever, *ib.*  
when trustees sever, costs paid to innocent trustee, *ib.*  
trustee not acquiescing in breach of trust may sever, *ib.*

## DEFENDANT

trustee, disclaiming, costs of, 11  
should not traverse statement of claim, *ib.*  
nor go into evidence, *ib.*  
unless reply delivered, *ib.*  
costs of appointing new trustees, on, *ib.*  
trustees should not sever defence, 16 [*see* DEFENCE]  
interrogatories by, as to trusts, 193

DELAY [*see* STATUTE OF LIMITATIONS]

in disclaiming, effect of, 11  
presumption of acceptance of trust from, 13  
in enforcing resulting trust, 68  
in sale, liability of trustees for, 114, 115  
not to affect rights, 115  
in selling securities, 89  
consent to marriage presumed by, 104  
in obtaining payment of portions, 166  
as to recovering trust estate bought by trustee, costs  
where, 193  
[*see* PURCHASE OF TRUST ESTATE]  
restraint on anticipation does not protect against, 267  
restricts account of mesne profits, 323  
in procedure no ground for giving interest, where, 284



## DELEGATION OF TRUST, 17—20

- not permitted, 17
- leaves liability of trustees for default, *ib.*
- to co-trustee, 17, 19
- investment, 17
- by sending cheque in ordinary course to co-trustee, 17
- arrangement for, *ib.*
- by trustee in bankruptcy, *ib.*
- to co-executor, 17, 18
- where agent of trustees abroad, 18
- to devisee or a stranger, upon disclaimer, *ib.*
- to solicitor, 18, 19
  - by one of trustees, 19
  - trusted by testator, *ib.*
- by payment to co-trustee, *ib.*
  - to solicitor, *ib.*
  - to agent, *ib.*
- of discretionary trust by grant or devise, 20

## DELIVERY

- \* of title-deeds out of Court to *c. q. t.*, 226
- securities transferable by, safety of, 100

## DEMURRER

- Statute of Limitations may be set up by, 316
- Statute of Frauds may not be set up by, 26

## DEPOSIT

- in bank which fails, liability for, 99 [*see* BANK—BREACH OF TRUST]
  - is not investment, *ib.*
  - to trustee's private account, *ib.*
- of deeds, equitable mortgage by [*see* INVESTMENT]
- may be left with auctioneer, 100

## DESCENDANTS,

- meaning of, 56

## DESCENT,

- younger son taking by, right of, to portion, 158

## DESIRE,

- words of, create trust, when, 52

## DE SON TORT

- trustee [*see* TRUSTEE]

## DEVISE

- passes legal fee where some trusts require it, 7
  - where annuity may last after trustee's death, *ib.*
- of freeholds construed by analogy to Statute of Uses, 1

DEVISE—*continued*.

- of copyholds not affected by Statute of Uses, *ib*.
- where under, trustees take less than legal fee, 7, 8
  - [see LEGAL ESTATE]
- indefinite, to executors, under, passes legal fee, 7
- to "trustees of inheritance" passes legal fee, 7
  - to serve annuity, *ib*.
- cases in which legal estate does not pass by, 2, 3
  - where legal estate passes by, 3, 4
- to trustees and their heirs *primâ facie* passes fee, 4
- but not if purposes do not require it, 5
- if trusts indefinite, not cut down, *ib*.
- onus* on those who say less intended, *ib*.
- where, passes estate in fee under Wills Act (ss. 30, 31), 4, 6, 7
- in trust to preserve beyond life-tenant's life passes legal fee, 6
- with power to cut timber passes legal fee, *ib*.
- in trust to pay debts passes legal fee, *ib*.
  - or debts and legacies, *ib*.
  - unless a less estate is intended, 7
- in trust for sale passes legal fee, 5
  - or mortgage to make payments, *ib*.
  - though trust arises after death of life-tenant, *ib*.
- with power of sale to pay debts, under, trustees retain legal fee, 6
- with indefinite power to lease passes fee, *ib*.
  - effect of Wills Act, in such case, *ib*.
  - same with duty to pay taxes and repair, *ib*.
- with power to take surrenders of leases passes legal fee, *ib*.
- to trustees, "as also their heirs and assigns," passes legal fee, 7
- when it passes legal estate *pur autre vie* with chattel interest added, *ib*.
- by eldest son to younger, effect of, on right of younger son to portion, 158
- by husband, of land bought out of separate estate, 249
- upon secret trust [see SECRET TRUSTS]

## DEVISEE,

- power of, to give receipts where charge of debts, 127, 128
- cannot avoid voluntary trust by sale, 36
- delegation of trust to, 18

## DEVISE OF TRUST ESTATES,

- where none, pass by general devise, unless contrary intention, 21
- contrary intention* shown from charge of debts, *ib*.
  - or debts and legacies, *ib*.
  - or legacies only, *ib*.

DEVISE OF TRUST ESTATES—*continued*.

- a single legacy, *ib.*
- by devise upon trust for sale, *ib.*
  - in strict settlement, *ib.*
  - upon charitable trusts, *ib.*
  - to tenants in common with accruer, 22
  - to tenants in common *simpliciter*, *ib.*
  - to class as tenants in common, *ib.*
  - to separate use, *ib.*
- no contrary intention* :—
  - devise “to use and behoof” of devisee, *ib.*
  - “for his own use and benefit,” *ib.*
  - “own absolute use and benefit,” *ib.*
  - “sole and own absolute use,” *ib.*
- mortgage estates pass under “securities for money,” *ib.*
  - “moneys upon mortgage,” *ib.*
- land contracted to be sold passes under, 22, 72, 73
  - “securities for money” under, *ib.*
- general devise in trust for sale, *ib.*
- general devisee of, may execute trusts, when, 23
  - though power to appoint new trustees, *ib.*
  - where “assigns” omitted, 23, 24
  - where devisee is heir of survivor, 24
    - or executor, *ib.*
  - where no estate given to trustees, *ib.*
- is not a breach of trust, *ib.*
- unadvisable where heir proper person, *ib.*
- person to whom no, assuming trusts, may be express trustee, 310

## DIRECTORS,

- with power of sale or lease, not to lease with option of purchase, 120
- compulsory payment into Court by, 274

## DISABILITY,

- trustee can buy trust estate of *c. q. t.* under, only with sanction of Court, 184

## DISAGREEMENT

- between trustees, receiver where, 273

DISCHARGE [*see* RECEIPT]

- trustees entitled to [*see* RELEASE], 236
- by opinion of Court on advice petition, 108
- of bankrupt trustee, unfitness after, 209
  - no release from breach of trust, 220
- from prison [*see* ATTACHMENT]
- of receiver, when new trustees appointed, 274

## DISCLAIMER,

- if trustee intends not to act, he should execute, 10
- mode of, 10, 11
  - by release, 10
    - conveyance, 10
  - at the bar, *ib.*
    - gives jurisdiction to appoint new trustees, *ib.*
  - by parol, *ib.*
    - operation on a use, *ib.*
    - conduct : non-interference, *ib.*
    - renouncing probate, 11
    - matters *in pais* and not of record, 10
- delay in, not construed into acceptance, 11
- costs of consulting counsel as to, *ib.*
  - of appointing new trustees, on, *ib.*
- after action brought, *ib.*
  - costs of disclaiming defendant trustee, on, *ib.*
- form of, *ib.*
  - by defence, *ib.*
- disclaiming trustee not to go into evidence of not having acted, *ib.*
  - unless reply delivered, *ib.*
- effect of, on estate of other trustees, *ib.*
- relates back to appointment, 12
- effect of, on powers of trustees, *ib.*
  - covenants by trustees, *ib.*
- where all disclaim, *ib.*
  - power of administrator *cum test. annexo*, *ib.*
  - legal estate vests in heir, *ib.*
- by executor of executor, *ib.*
- delegation to devisee or stranger, upon, 18
- construed as desire to retire, 208
- vests power to appoint new trustees in others, *ib.*
- reservation of power to appoint new trustees, notwithstanding, *ib.*
- consent to marriage to be given after, 104
- trustee may buy trust estate after, 183
- of one trustee no ground for receiver, 273
- husband's, may create separate use, 248

## DISCOVERY [see SEPARATE ESTATE]

## DISCOVERY

- of secret trust, right to, 79
  - for charity, 81
- of fraud, time does not run till, 320
  - inquiry as to time of, *ib.*

## DISCRETION,

- general in matters not contemplated by settlement, 101
- to do what Court would have ordered, *ib.*
- sell or mortgage to pay debts, *ib.*
- make necessary payments, 101
  - inquiry as to, 106
- clear estate from doubtful claim, 101
- compromise, *ib.*
- pay capital sums to annuitant, *ib.*
- advance their own money and claim lien for it, *ib.*
  - not sale or foreclosure, *ib.*
- not to refuse request of *c. q. t.* without reason, *ib.*
  - costs where they refuse, *ib.*
- consulting *c. q. t.* as to exercise of, *ib.*
- where validity of appointment doubtful, *ib.*
- trust with a, cannot be delegated, granted, or devised, 20
  - even to a co-trustee, *ib.*
- refusal by trustee to exercise, not ground for removal, 216
- exercise of, by Court [*see* POWER]
- to appoint new trustees, control of Court as to, 204
- as to sale or exchange [*see* SALES BY TRUSTEES]
  - of parts of or whole estate, 112
- to sell, effect of, on duty to convert wasting securities, 92, 93
- as to time of sale of securities, by trustees, 89
  - sale within a year, 89, 114
  - excessive delay, 89
- as to investment of purchase-money gives power to give receipts, 125
- as to lending on personal security, 136
- as to investment in land, exercise of, 146
- to vary securities [*see* POWER]
- to get in debt or not, 87
- as to mode of raising money for debts, 154
  - out of mines or timber, *ib.*
  - rents, 155
  - by sale, *ib.*
  - by leases on fines, *ib.*
- as to renewing leases under Lord Cranworth's Act, 148
  - before the Act, 149
- as to maintenance, when controlled by Court, 174
  - after action, 175
    - payment into Court, *ib.*
    - allowance of payments, *ib.*
  - under Cranworth's Act, 171
  - with reference to father's ability, 173
  - of married woman, 256
  - whether payable out of which of two funds, 177

DISCRETION—*continued*.

- during life, *ib.*
- of bankrupt, *ib.*
- after bankruptcy, *ib.*
- of bankrupt *or* his family, 178
- as to advancement, 181
- of trustee under creditor's deed to allow opposing creditor to come in, 41
- of donee does not defeat secret trust, 80
- of Court as to attachment, 277

DISENTAIL [*see* ESTATE TAIL]

- effect of, on right to portion, 158

## DISPOSAL,

- separate use where property to be at, 253, 256

## DISPOSITION,

- power of, by married woman, of separate estate [*see* SEPARATE ESTATE]

## DISSEISIN, 271

## DISTRESS

- by *c. q. t.* in possession, 221
- right of, and entry, without term to raise portions, 164

## DISTRIBUTION,

- power of, in nature of trust, how executed, 103

## DISTRIBUTIONS, STATUTE OF,

- advance by portion under, 180

## DISTRINGAS

- by assignee of equitable interest, 234, 292

## DIVIDENDS,

- received by one trustee, co-trustees liable for, 15
- order for one of several trustees to receive, 15
- apportionment of [*see* APPORTIONMENT]
- third, in one year, by change of investment, 136
- restraint on anticipation does not prevent payment out of past, 268
- in bankruptcy, purchase of, 168

## DIVORCE,

- does not deprive husband of life interest, 235

## DOMICIL,

effect of *c. q. t.'s.* on appointment of foreign trustees, 212  
 foreign, of married woman, does not enable Court to get rid  
 of restraint on anticipation, 267

## DONATIO MORTIS CAUSA,

informal voluntary gift, not being, 34

## DOWER,

trust estates are liable to, 269  
     though husband had right of entry only, *ib.*  
     not out of estates disposed of, *ib.*  
     not where declaration against, *ib.*  
     not before Dower Act, *ib.*  
     equity of redemption, *ib.*  
     where wife concurred in mortgage, *ib.*  
     gavelkind, out of, 270  
     freehold leased for lives, *ib.*  
     executory devise over, does not prevent, *ib.*  
     proceeds of sale, out of, *ib.*

## DRAINAGE,

power of trustees to spend money in, 106

## DRUNKENNESS,

receiver where evidence of, of trustee, 273

DUCHY OF LANCASTER [*see* PALATINE COURT]

DUTY, trust coupled with, legal estate vests where, 2

## EARMARKING

money, meaning of, 300  
 trust money at bankers, 99

## EARNINGS,

separate, under Married Women's Property Act, 250  
 equitable assets, 252

## EAST INDIA STOCK

investment on [*see* INVESTMENT]  
 petition for advice as to, 109

## EDUCATION,

power of, "is usual power" in settlement, 50  
 advancement for, 179

## ELECTION,

- between portions and other provision [*see* PORTIONS]
- by wife between will and purchase in her name, 14

## EMIGRATION,

- advancement for, 179

## ENFRANCHISEMENT,

- conveyance on, to trustees, 122

## ENGAGEMENTS,

- of *feme covert* binding separate estate [*see* SEPARATE ESTATE]

## ENTRY,

- right of, effect of, on vesting of portions, 160
- and distress, without term to raise portions, 164

## EQUITABLE ASSETS,

- separate earnings of married woman are, 251

EQUITABLE ASSIGNMENT [*see* ASSIGNMENT ; NOTICE]

## EQUITABLE CLAIM,

- bar of [*see* STATUTE OF LIMITATIONS]

## EQUITABLE ESTATE,

- legal estate cannot pass where testator has only, 3
- voluntary settlement of, 28
  - reversionary, *ib.*
- voluntary trust of, acceptance of, by original trustees, 28
  - not void by getting in legal estate, 35
  - interest in agreement for lease, 28
- separate use, conveyance of, by married woman entitled to, 258
- dower out of, 269 [*see* DOWER]
- curtesy out of, 270 [*see* CURTESY]

EQUITABLE MORTGAGE [*see* INVESTMENT]

## EQUITIES,

- assignee of chose in action takes subject to, 288
- lessee under renewed lease takes subject to, 77
- equal, 295
- doubtful, notice of, effect of, 299
- strange trustees not to refuse payment on account of, 234

## EQUITY OF REDEMPTION,

- investment on, by trustees, 147
- title to share of, on joint purchase of, 69
- mortgagee may buy, 186
  - secus* where poverty or pressure, *ib.*



EQUITY OF REDEMPTION—*continued*.

- when solicitor is mortgagee, 186
- renewal of lease by mortgagee enures for old, 75
- dower out of, when, 269
  - where wife concurred in mortgage, 270

## ESCHEAT,

- for want of heir abolished, 243
- on conviction of felony, abolished, *ib.*

## ESTATE,

- of trustees [*see* LEGAL ESTATE]

## ESTATE TAIL,

- Court protects, in executory trusts, how, 43, 44, 45, 47
  - [*see* EXECUTORY TRUSTS]
- words of recommendation cannot prevent barring of, 54
- after barring, consent of protector to sale, 119
- equitable, of *feme covert*, if to separate use may be barred, how, 258

## EVIDENCE,

- of parol trust, what required, 33
  - proof of, by conversations, *ib.*
- of intention that trust should result, 60
- to rebut resulting trust on purchase in stranger's name, 67
  - onus of proof, *ib.*
  - of poverty of grantee, *ib.*
  - as to who paid price, 68
  - of payor's intention, *ib.*
  - parol, 61
- to rebut presumed advancement by parent, *ib.*
  - [*see* RESULTING TRUSTS, 61—66]
- of intention to rebut advancement by purchase in son's name, 65
  - must be antecedent or contemporaneous declarations, *ib.*
  - effect of subsequent authority to father to sell, 66
  - after death, only declarations against interest, *ib.*
- of person claiming advancement against resulting trust, *ib.*
- parol, to prove secret trust, 80
- of wife's assent to transfer of separate estate to husband, 248
- of benefit of joint sale by trustees, 118
- of fitness of new trustees, 205
- to shew fund in trustee's hand not allowed to obtain payment into Court, 275
- receiver, on application for appointment of, 272
- not admitted on advice petitions, 108, 109

## EXCHANGE,

- power of, when to be exercised, 111
- money from, reinvestment of, 132

EXCHEQUER BILLS [*see* INVESTMENT]

- temporary investment in, 100

## EXECUTED TRUST,

- what is an, 43
- [*see* EXECUTORY TRUSTS]

## EXECUTION

- of trust-deed by creditors, 37, 38

## EXECUTION CREDITOR

- may buy debtor's property, 188

## EXECUTORS

- take legal fee under indefinite devise to them, 7
- take legal estate in term as long as required by limitation of it, 2
- not bound to assume continuing trust, 206
- upon trust, acceptance of trusts by, 13
- assenting to trust-legacy accept trusts, 13, 307
- [*see* STATUTE OF LIMITATIONS]
- non-investment of trust-legacy by, remedy for, 324
- not intending to act should disclaim, 10
- mode of disclaimer [*see* DISCLAIMER]
- executor of, cannot disclaim, 12
- acceptance by, 13
- trustee for next of kin, when, 243
- delegation by, to co-executor, 17
- liability of, for misapplication by co-executor, 18, 220, 240
- for safety of assets, 98
- receipt by [*see* RECEIPT OF TRUSTEE]
- mortgage by, 123
- renewal by, in their own name, 74
- [*see* CONSTRUCTIVE TRUSTS]
- following assets disposed of by, 298
- of trustee liable for breach of trust, cannot set up bar by analogy to statute, 314
- notice where trustee is, 289
- cannot buy estate, 185
- legacy from legatee, when, *ib.*
- in trust, may not profit by trust, 196
- acting as agent cannot charge commission, 197
- need not obey desire to continue agent, 55
- acting in self-imposed trust of managing a business, a constructive trustee, 310

**EXECUTORS**—*continued*.

- renewal of bond of minor by, on majority, 138
- power of, where executor of surviving trustee, 24
  - to appoint new trustees, 203
- of last surviving trustee must transfer to new trustees, 213
- renouncing, power to appoint new trustees vests in others, 208
- appointment of, by married woman, effect of, 232
- payment by trustees to, receipt for, 233

**EXECUTOR DE SON TORT,**

- renewal by, in his own name, [*see* CONSTRUCTIVE TRUSTS] 74

**EXECUTORY TRUSTS,**

- definition, 43
- mode of execution of, by Court, *ib.*
- effect of rule in Shelley's Case upon, *ib.*
- distinction between, in articles and in wills, *ib.*
  - settlor "his own conveyancer," where, 44, 47
- in marriage articles*, 44—47
  - "heirs of the body" construed as words of purchase, 44
    - includes females, when, 49
    - issue, *ib.*
- special entail, how protected, 44
  - husband's lands, *ib.*
  - wife's, 45
- limitation to issue of husband and wife, *ib.*
- where husband and wife can bar jointly only, *ib.*
- no strict settlement where other provision, *ib.*
- rectification of settlement made under, *ib.*
  - evidence *aliunde* not required, *ib.*
- where settlement is under altered intention, *ib.*
  - such settlement postnuptial and voluntary, 45
  - its rectification on ground of mistake, 45, 204
- followed if distinct contract in them, 46
- "issue" includes females in, *ib.*
  - form of settlement on females in, *ib.*
- joint tenancy construed tenancy in common, when, *ib.*, 49
  - limitation over on death under 21, *ib.*
- joint tenancy implied by limitation to children, *ib.*
- purchaser for value without notice, limitations not varied against, *ib.*
- secus*, against purchaser with notice, when, *ib.*
- non-production of, prevents Court from moulding, 47
- in wills*,
  - when trusts are executory and when not, 47
  - where trusts imperfectly declared, *ib.*
  - not where testator "his own conveyancer," *ib.*
- not modified* : "proper entail," 47

EXECUTORY TRUSTS—*continued*.

- to settle land upon "A. and the heirs of his body," 47
  - "A. for her separate use for life and then to convey to her heirs, 48
  - by reference to other trusts, *ib*.
- modified*: restriction as to "docking entail," *ib*.
  - remainder over to "issue," *ib*.
    - on death without issue, *ib*.
  - separate use and gift over, *ib*.
  - as counsel shall advise, *ib*, 50
  - as trustees shall think proper, 49
  - according to limitations of a peerage, *ib*.
  - where too remote, *ib*.
  - restraint on anticipation added, *ib*.
  - trust for renewal added, 149
  - protector, appointment of, 49
  - when life estates *sans* waste, *ib*.
    - not if restrained from anticipation, *ib*.
  - of gavelkind lands, *ib*.
  - where joint tenancy construed tenancy in common, *ib*.
- settlement of personalty by reference to trusts of realty, 50
  - what powers inserted, *ib*.
  - "usual powers," what are, *ib*.
    - [*see* POWER]
- where direction to settle too vague, *ib*.
  - "on marriage," *ib*.
  - but not "upon younger children," 51
- of chattels by reference to trusts of land, *ib*.
  - vesting in first tenant in tail, how prevented, *ib*.
  - "so far as rules of law and equity permit," effect of, *ib*.
  - to take jewels as heirlooms, *ib*.

## EXONERATION

- of purchasers [*see* RECEIPT OF TRUSTEE]

## EXPENSES

- of renewal of leases, apportionment of [*see* RENEWAL OF LEASES ; COSTS]

## EXPRESS TRUST,

- right of trustee to release under, 236
- executor assenting to trust-legacy, holds on, 13
- devisees of trust estates not passing, who acts, is, 14
  - [*see* STATUTE OF LIMITATIONS]

## FAILURE

- of trust [*see* TRUST]

FAILURE—*continued.*

- resulting trust from, of original trusts, 60
- of purpose of illegal trust, 85
- of purpose of advancement, 180
- of next of kin, Crown takes on, 243
- of charitable trust, executor is trustee for Crown if no next of kin, 243

## FAMILY,

- meaning of, 56

## FARM BUILDINGS,

- power to build new, 105

## FATHER,

- ability of, to maintain [*see* MAINTENANCE]

## FEE SIMPLE,

- trustees take under what devise, 5—7
- [*see* LEGAL ESTATE]
- purchase of reversionary, by partner, 77
- by tenant for life, 78
- adjustment of charges, *ib.*

## FELON,

- property of, vested in administrator, 243

## FELONY,

- escheat and forfeiture on conviction of trustee for, abolished, 243
- inquiry as to trusteeship, *ib.*
- of equitable estate, *ib.*
- power to appoint new trustee on conviction for, 209

## FEMALE

- undesirable person, whether married or single, to be trustee, 212

FEME COVERTE [*see* MARRIED WOMAN]

## FEME SOLE,

- voluntary settlement by, 32

## FEOFFMENT

- to stranger, without consideration, resulted, 60

## FINES,

- apportionment of [*see* RENEWAL OF LEASES]
- leases on, to pay debts, not allowed when forbidden to sell, 155

## FIRM,

- trust money lent to, when recoverable, 325
  - partners of, must know the fund to be, *ib.*
  - tracing, into hands of, 326
  - profits from, not recoverable, *ib.*
- compulsory payment into Court where trust fund lent to trustee's, 275
  - [see TRADE ; PARTNER]

## FOLLOWING TRUST ESTATE

- purchaser for value without notice*, not allowed against, 293
  - defence of, resting on deed disclosing trust, 29
    - on defective title, *ib.*
    - interrogatories as to, *ib.*
    - traverse of, by evidence of single witness, *ib.*
    - notice must be denied, on, 295
    - equal equities, where, *ib.*
  - voluntary grantee though without notice cannot set up, *ib.*
  - where trustees have destroyed contingent remainders, *ib.*
  - deeds, not ordered to be given up by, *ib.*
    - with equitable mortgagee, where, *ib.*
  - selling to person with notice, 296
  - purchase by person without, from, *ib.*
    - notice through agent, *ib.*
  - vendor's lien within principle of, *ib.*
  - all parties to breach of trust equally liable in, 297
    - [see STATUTE OF LIMITATIONS]
  - notice, constructive, good in case of, *ib.*
    - solicitor acting for both sides, *ib.*
    - distinction between, and personal notice, 298
  - notice by nature of transaction, *ib.*
    - recitals giving, *ib.*
    - in different transactions, 299
    - doubtful equity, of, *ib.*
    - before conveyance enough, *ib.*
  - form of plea of, *ib.*
  - price must have been paid, *ib.*
    - security for, not enough, *ib.*
    - part payment of, not enough, *ib.*
  - purchaser with notice*, as a trustee against, 293, 294
    - set off by, 294

FOLLOWING TRUST ESTATE—*continued*.

*purchaser with notice*, as a trustee against : surrender of rights  
     acquired by, 296  
     acquiescence during ignorance  
     not available by, *ib.*  
     legal estate got in no protection  
     to, 296, 297  
     except against other than equitable  
     claims, 297

*after wrongful conversion* by trustee, 299  
     principle as to, *ib.*  
     when trust fund traceable, 300  
         trust stock sold, *ib.*  
     difficulty of tracing, *ib.*  
         earmarked property, *ib.*  
         cheques, use of, 301  
     loss of fund, effect of, *ib.*  
     identification of property, *ib.*  
     mixing with trustee's private moneys, 301, 302  
     injunction to prevent the conversion, 301  
     liability of banker on trust accounts, 302  
     banker not a trustee, *ib.*  
     trust account so marked, *ib.*  
     death of trustee does not prevent, *ib.*  
     appropriation of money in bank (Clayton's  
         Case), 301, 302  
         fraudulent items, 303  
     agents, liability of, *ib.*  
     solicitors, liability of, *ib.*  
     husband, liability of, *ib.*  
     trustee in bankruptcy, liability of, 304  
     similar property of trustee may be applied, *ib.*  
     fund in Court, *ib.*

*into land* purchased by trustees, *ib.*  
     parol evidence admissible for, *ib.*  
     tenant for life, against, 304, 305  
         lien, declaration of, for moneys traced, 304  
     person bound to lay out, purchasing land, against, 305  
         presumption as to, *ib.*  
         identity of sum laid out, *ib.*  
         poverty of person so bound, *ib.*

into mortgage, 219

## FORECLOSURE

by mortgagee under unauthorised mortgage, 123  
 trustees not entitled to, for money advanced out of pocket, 102  
 opening, 187

FOREIGNER [*see* ALIEN ; FOREIGN PROPERTY]

## FOREIGN PROPERTY,

- trust of, Court administers, if trustee in England, 244
- colonial land, *ib.*
- Court acts only if privity between parties, 245
- lex loci* must not have been infringed, as to land, *ib.*
- lex loci*, inquiry as to, *ib.*
- foreign Court having jurisdiction, *ib.*
- action by foreigner as to, against foreigner, *ib.*
- defendant in England, and better remedy here, as to, *ib.*
- injunction against proceedings abroad as to, *ib.*
  - identical proceedings abroad as to, *ib.*
    - where plaintiff entitled to property here and also to, 245
    - terms on granting, 246
- order for service out of jurisdiction does not extend jurisdiction as to, *ib.*
- charity, trusts of, for, jurisdiction as to, *ib.*

FOREIGN STOCKS [*see* INVESTMENT]

- investment in, petition for advice as to, 109

## FORFEITURE,

- for want of heir, abolished, 243
- on conviction for felony abolished, *ib.*

## FORGERY,

- removal of trustee for, 216
- of solicitor-trustee on conveyance to purchaser, 298

## FRAUD,

- liability of trustee for, 98
  - executor, *ib.*
- of co-trustee, liability of trustee for, 17
- of co-executor, liability of executors for, 18
- of solicitor, trustees liable for, 19
  - though a co-trustee, *ib.*
  - where appointed by one trustee, *ib.*
  - action as to : joinder of trustees, *ib.*
- of agent, 187
  - of trustees, where it makes him constructive trustee, 72
- of married woman, 266
- secret trust enforced on ground of, 79
  - against an ignorant donee, whether, 81
- in secret trust for charity, 82
- relief against purchaser with notice founded on, 293
- concealed, *c. q. t.* not barred until discovery of, 320
  - inquiry as to time of discovery of, *ib.*



FRAUD—*continued*.

- suspicion of, not within rule as to concealed fraud, 321
- discovery of, 322
- receiver or borrower of trust-money is a trustee on ground of, 322
- particeps criminis* in, cannot set up Statute, *ib.*
- lunatic not barred by non-discovery of, *ib.*
- prevents acquiescence during ignorance, 296
  - application of rule in Clayton's Case (*q. v.*), 303
- withholding payment by trustee to *c. q. t.* by, 230
- on power, trustees must not pay on appointment which is, 233
- notice of intended, trustees having, must not pay to trustees under appointment, 233
- renewal of lease by trustee, &c., without, 74
  - [*see* CONSTRUCTIVE TRUSTS]
- against creditors under 13 Eliz. c. 5, 35
  - purchasers under 27 Eliz. c. 4, *ib.*
- absence of consideration is, *ib.*
  - proof of value, *ib.*
- in appointment of new trustees, 204
- on obtaining opinion of Court on advice petitions, 108
- inducing marriage without consent, 104
- withdrawal of consent to marriage obtained by, *ib.*
- interest payable by trustees for, 283
- false accounts rendered by trustees, interest payable where, 285

FRAUDS, STATUTE OF [*see* STATUTE OF FRAUDS]

- resulting trusts not within, 61
  - parol evidence to rebut, *ib.*
- separate estate bound, subject to, where, 259

FRAUDULENT CONVEYANCE [*see* FRAUD]

## FRAUDULENT PREFERENCE,

- creditor paid by, and ordered to repay, not within s. 4 of Debtors' Act, 277

## FREEBENCH,

- none, out of equitable estate in copyhold, 270

## FREEHOLD,

- legal estate in trustees on devise of, 1
- duration of legal estate in, 2
- mortgage of, by trustees [*see* INVESTMENT]

## FRIENDLY SOCIETY,

- trustees of, injunction against, as to funds of, 280

## FUND IN COURT,

- new trustees of, to be parties to administration action, 205

FUND IN COURT—*continued.*

- not paid out to sole trustee, 213
- cannot be followed, 304
- charging order on, 292
- payment for building, &c., out of, 105, 106
- under Settled Estates Act, application of, 106
- restraint on anticipation does not prevent payment out of, 268  
*secus*, if stock, *ib.*
- payment out of, after protection order under Divorce Act, *ib.*

## FUNERAL EXPENSES,

- separate estate, liability of, for, 252

## FURTHER CONSIDERATION,

- compulsory payment into Court, order for, on, 275
- interest given on, though not prayed, 284
- not given on, on sum found by Chief Clerk, *ib.*

## GAVELKIND,

- lands in, executory trust of, how executed, 49
- sale moneys of, rights in land bought with, 146
- dower out of, 270

## GENERAL DEVISE

- passes trust or mortgage estates, where, 21—24
- [*see* DEVISE OF TRUST ESTATES]

GENERAL ENGAGEMENTS [*see* SEPARATE ESTATE]

## GENERAL ORDER,

- 1st Feb., 1861 : investment, 132, 133

## GETTING IN TRUST ESTATE,

- duty of trustees to get in improper investments, 86
- to invest balance in Consols, *ib.*
- to get in personal securities, *ib.*
  - with all convenient speed, 87
- discretion to vary securities, *ib.*
- to obtain transfer of settlement funds, *ib.*
  - liability for misappropriation by husband, *ib.*
  - liability of husband, *ib.*
- discretion to call in a debt or not, 87
- power to advance to husband on "sufficient security," *ib.*
  - not to take his bond, *ib.*
  - not to forbear to sue, *ib.*
- to compromise and release rights, 87, 88

GETTING IN TRUST ESTATE—*continued.*

- duty of trustees, liability for not suing, 87, 88
  - to get in insufficient fund charged with payments, *ib.*
  - liability to keep up policy, 89
    - for neglecting to give notice as to policy, *ib.*
    - to register, *ib.*
    - for giving receipt for money not received, *ib.*
  - discretion as to time of sale of securities, *ib.*
    - must show why no sale in the year, *ib.*
    - excessive delay, *ib.*
  - receiving before appointed time, *ib.*
  - continuing trade, 89, 90
    - liability of executor, 90
      - where power to trade limited, *ib.*
      - indemnity for, *ib.*
  - sale of goodwill, *ib.*
  - discharging servants, *ib.*
  - calling in mortgages, if good, *ib.*
    - if bad, *ib.*
  - calling in equitable debt, *ib.*
  - receipts good under 22 & 23 Vict. c. 35, or 23 & 24 Vict. c. 145, ss. 29 and 34, 91
    - for personal debts and those payable out of land, *ib.*
- misapplication after, by one of trustees, 239
- receiver on omission of, 272
- Wasting Securities* to be converted, unless contrary intention, 91—96
  - what are, 91
  - non-conversion of, is breach of trust, *ib.*
    - rights against tenant for life, 91, 92
- unauthorised securities, *ib.*
- contrary intention : tenant for life to take whole income, *ib.*
  - burden of proof, *ib.*
  - specific gift of leaseholds, 92
  - general words after gift, *ib.*
  - "rents," "income," "dividends," "profits," 92, 93
  - postponement of sale to death of life-tenant, *ib.*
    - for definite time, 94
    - indefinite time, *ib.*
  - division at his death, 93
  - specific gift at his death, 94

GETTING IN TRUST ESTATE—*continued*.

- contrary intention: gift of unsold part, 94
  - reference to leaseholds as not likely to be sold, *ib.*
  - fund invested in business, *ib.*
  - defective title, *ib.*
  - life-tenant's consent to sale required, *ib.*
- no contrary intention: gift of maintenance, 93
  - direction to convert, *ib.*
  - to sell to pay debts, *ib.*
  - to continue investments, *ib.*
  - to vary securities, *ib.*
  - discretion to sell, *ib.*
  - sale from time to time, *ib.*
  - sale at indefinite time, *ib.*
- reversions to be converted: rights of life-tenant, 95
  - falling in before conversion, *ib.*
  - expectant on life-tenant's death, *ib.*
- adjustment of rights of tenant for life and remaindermen, 95—97
  - in proper investments, 95
    - how calculated, *ib.*
  - in investments returning very high interest, 96
  - in case of real estate, *ib.*
  - in improper investments, *ib.*
  - in inconvertible property, 97
  - in income to be accumulated, *ib.*
  - in income of fund to meet contingent legacies, *ib.*
  - overpayment of income to life-tenant, recovery of, 231

GIFT [*see* VOLUNTARY TRUSTS—DECLARATION OF TRUST]

- of money, &c., *primâ facie* absolute, 61
- to solicitor, 190
  - counsel, 191
- by husband to wife, 248
- by wife to husband, destruction of separate use by, *ib.*
  - evidence as to, 248, 249

## GIFT OVER,

- where legal, after life estate, trustees take *pur autre vie*, 8
- effect of, on vesting of portions, 161
- separate estate not bound by debt, where, in default of appointment, 261

## GOODWILL,

- sale of, by trustees, 90

## GOVERNMENT SECURITIES,

- investment in [*see* INVESTMENT]

GRANDCHILDREN,

portions, when they take, 157

GRANDFATHER

*in loco parentis*, when, 65

GRANTOR,

grant by, without consideration, results to, 60  
except to wife or child, *ib.*

GRAVEL

pits, power of trustees to work, 107

GROUND RENTS,

investment in, petition for advice as to, 109  
mortgage of, 142  
under power to lend on real security, 143  
purchase of, 146

GUARANTEE

by married woman [*see* SEPARATE ESTATE]

GUARDIAN

is trustee for ward, 310  
entering on ward's land, remedy on, 311  
[*see* STATUTE OF LIMITATIONS]  
account of mesne profits against, 323  
cannot make profit, 198  
buying estate of wards, 189  
maintenance, payment of, to, 171

HEIR

takes legal estate where all trustees disclaim, 12  
meaning of, in precatory trust, 56  
cannot avoid voluntary trust by sale, 36  
not excluded from resulting trust by negative words, 59  
nor by bare intention, *ib.*  
nor by legacy to him, *ib.*  
[*see* RESULTING TRUST]  
right of, to discovery of secret trust, 79, 81  
power of, where devisee of surviving trustee, 24  
leaving trust estates to descend to, *ib.*  
of vendor dying before conveyance, conveyance by, 224  
infant, conveyance by, 210, 224  
concurrence of, in conveyance on sale to pay debts, 128

HEIRLOOMS,

jewels to be taken as, 51  
sale of, private Act for, 103

## HOPE,

words of, create trust, when, 52

HOUSE [*see* MANSION-HOUSE]

purchase of under trust to invest in land, 146

## HOUSEHOLD,

separate estate not liable to maintain, 263

expenses, money given for, when separate estate, 253

## HUSBAND

of *c. q. t.* may be trustee, 211

right of, to select new trustee of separation-deed, 204

executory trust in articles as to lands of, 44

[*see* EXECUTORY TRUSTS]

liable for secret trust in wife, 81

does not lose life interest on divorce, 235

curtesy of, in equitable estates, 270

words in gift to *feme covert* to exclude [*see* SEPARATE ESTATE]

trustee for separate use, where no other trustee, 247

conveyance of separate estate to, by trustees, 223

separate estate, gift of, by wife to, 248, 249

loan to, out of, 249

devise by, of land bought with, *ib.*

acquiescence of wife in dealings by, as to, *ib.*

acknowledgment by, of right to, *ib.*

wife following trust property into hands of, 303

expenditure upon separate estate by, 248

charges on separate estate, lien for payment of, by, *ib.*

debt of, separate estate not liable for, 262, 263

poverty of, no ground for charging separate estate, 263

chargeable to parish, separate estate liable where, *ib.*

action against, as to separate estate, 264

injunction against, from receiving separate estate, *ib.*

loan to [*see* INVESTMENT]

covenant by, in marriage settlement, enforcement of, 87

bond by, trustees should sue on, *ib.*

instalments unpaid by, trustees should sue for, 88

misapplication by, 87

through default of trustees, remedy for, 325

where husband insolvent, *ib.*

## IDIOT,

maintenance of, 175

## IGNORANCE

- of title under which trustee holds excuses him, 241
- of law, refusal to pay to *c. q. t.* from, 230
- prevents bar to upsetting purchase of trust estate by trustee, 195
- acquiescence not binding during, 318
- fraud prevents acquiescence during, 296
- release void on ground of, of *c. q. t.*, 237

ILLEGAL [*see* CONSIDERATION]

## ILLEGALITY

- rebutts resulting trust on purchase in stranger's name, 67

## ILLEGAL TRUSTS, 83—86

- not enforced, 83
- of money to procure peerage, *ib.*
- attempting to control limitations of peerage, *ib.*
- immoral trusts are, *ib.*
- against religion, *ib.*
- for future illegitimate children, *ib.*
  - of testator, not, *ib.*
  - how bastards may take, *ib.*
- for future separation, *ib.*
  - separation should follow on deed, 84
- attempts to continue interest after bankruptcy, *ib.*
  - to restrain power of alienation, *ib.*
  - forfeiture on bankruptcy or alienation with gift over, good, *ib.*
  - maintenance after bankruptcy, *ib.*
  - to restrain enjoyment after 21, *ib.*
  - by divesting settlement "on marriage," *ib.*
- pleading, mode of, 85
- failure of illegal purpose, *ib.*
  - deed to defeat creditors, *ib.*
- created under mistake as to legal effect of apprehended conviction, *ib.*
- perpetuities [*see* RULE AGAINST,] 152
- accumulations [*see* THELLUSSON ACT]
- for superstitious purposes, 85
  - uncertain charitable purposes, *ib.*
- against Statute of Mortmain, 82, 86
- resulting trust, where trust is, 60

## ILLEGITIMATE CHILDREN,

- future, trusts for, illegal, 83
- valid trusts for, *ib.*
- advancement of, by purchase in name of, 65
- of intestate, memorial by, to Crown, 244

- IMMORALITY,  
trusts void for [*see* ILLEGAL TRUSTS; CONSIDERATION], 83
- IMPERFECT GIFT [*see* VOLUNTARY TRUST]
- IMPLIED TRUST,  
to renew leases, 149  
within Trustee Acts, 210 [*see* CONSTRUCTIVE TRUSTS]  
bar of, by laches, 313  
    analogy to Statute in, *ib.*  
s. 24 of Statute of Limitations, under, 314
- IMPOUNDING,  
interest of beneficiary concurring in breach of trust, 335  
    of trustee, *ib.*  
        in annuity, 336  
        income, *ib.*  
        legal life estate not liable to, *ib.*  
right of, cannot be waived by trustee, *ib.*
- IMPRISONMENT [*see* ATTACHMENT]  
for misappropriation of trust funds under Larceny Act, 281
- IMPROVEMENTS [*see* BUILDING; REPAIRS; POWER]  
agricultural, power to make, 106  
by building on land subject to trust for sale, *ib.*  
under 27 & 28 Vict. c. 114, 107, 134  
    advances for, 107  
    interest on, *ib.*  
    charge of, on inheritance, *ib.*  
lien for, of joint purchaser, 70  
    of constructive trustee of renewed lease, 78  
of trust estate bought by trustee, allowance for, 191  
    in cases of fraud, 192
- INCAPACITY,  
of *c. q. t.* gives trustee power to give receipts, where, 125
- INCOME,  
tenant for life's right to, of wasting property, 91—97  
of residue, right of tenant for life to, 95—97  
maintenance out of [*see* MAINTENANCE]  
excessive advancement made up out of, 181  
arrears of, interest on, when payable by trustee, 284
- INCUMBRANCE,  
priority of [*see* NOTICE]  
on separate estate, lien of husband for payment of, 248



## INDEMNITY,

- to trustees, under Lord St. Leonards' Act, 237
  - effect of usual clause of, *ib.*
  - where trustee covered by, *ib.*
- to retiring trustee, 207
  - on appointment by Court, 208
- to trustees against leasehold covenants, 78, 121
- to trustee for calls on shares, 140
  - married woman, 262
- between trustees where no breach of trust, no equity for, 332
  - secus* where breach of trust, *ib.*
- by stranger benefited by breach of trust, *ib.*

INDIA STOCK [*see* INVESTMENT]

## INDORSEMENT,

- incomplete voluntary trust by, on share certificate, 29
  - on bond, *ib.*
  - on lease, *ib.*
- of assignment of equitable interest on settlement, 234

## INFANCY

- prevents bar to upsetting purchase of trust estate by trustee, 195

INFANT [*see* MAINTENANCE ; ADVANCEMENT ; GUARDIAN]

- joint lessee, loss on renewal not borne by, 76
- trustee removable, 212
  - retains right to assume trust at 21, 212
- daughters, direction to settle "on marriage" of, void, 84
- not damaged by merger of portion, 168 [*see* PORTIONS]
- heir declared trustee for purchaser within Trustee Acts, 210
- feme covert* being, cannot destroy separate use, 251
- cannot concur in breach of trust, 334
- release by, of breach of trust, 336
- account of mesne profits in favour of, 323

## INFORMATION,

- by trustees, to be given to *c. q. t.*, 229
  - withholding, *ib.*
- as to notices of assignments, 289, 290

## INHERITANCE,

- charging, with expense of rebuilding, 107
  - under 27 & 28 Vict. c. 114, *ib.*
- right of, to timber, 107

## INJUNCTION

- to restrain breach of trust, 279
  - co-trustee, *ib.*

INJUNCTION—*continued*.

- bankrupt trustee, *ib.*
- purchaser, *ib.*
- trustees of charity, 280
- appointment of new trustee, *ib.*
- trustee for sale under mortgage, *ib.*
- unauthorised sale by trustee, 113, 280
  - transfer by trustees, 301
- none where trustee has paid to private account at bank, *ib.*
- to restrain proceedings as to lands abroad [*see* FOREIGN PROPERTY]

## IN LOCO PARENTIS,

- advancement by one [*see* RESULTING TRUSTS, 61—66]
- legacy by person, maintenance out of, 172
  - by grandfather, *ib.*
- grandmother, as to right to portions, 159
- uncle, as to right to portions, *ib.*

## INQUIRY,

- as to title, 144
- as to ability of father to maintain children, 173
  - of mother during widowhood, 174
    - after second marriage, *ib.*
- as to maintenance out of capital, 176
- as to amount of maintenance for bankrupt, 178
- not directed on advice petitions, 109
- as to overpayment of income of wasting property to life-tenant, 231
- wilful default, as to [*see* WILFUL DEFAULT]
- as to concurrence in breach of trust [*see* BREACH OF TRUST]

## INSOLVENCY,

- receiver appointed, on, of trustee, 272
- of trustee, liability of co-trustee on, 239
- non-enforcement of debt by trustees on account of debtor's, 325

## INSTALMENTS,

- suing for, 88

INSURANCE [*see* POLICY]

- life, how applicable to renewal of lifeholds, 151
- to secure fund advanced to wife under power, 179
- in son's name, intention of advancement as to, 63
- liability of trustees for, under testator's covenant, 100
  - for allowing life policy to drop, *ib.*, 326

## INSURANCE OFFICE,

- notice to, of assignment of policy, 30

## INTENTION

- to vest legal estate in trustees, by will, 1
  - by deed, 9
- to become trustee by parol declaration of trust, 33
- of voluntary trusts not carried out, deed cancelled where, 31
  - reformed by consent, *ib.*
- to keep of control of property subject to voluntary trust, 33—35
- memorandum of, "to leave," &c., no trust, 34
- to exclude heir from resulting trust must be express, 59
- against resulting trust, of bounty to relations, *ib.*
- that trust should result, evidence of, 60
- of advancement, by purchase in son's name [*see* RESULTING TRUSTS, 61—66]
- in will as to duty to renew leases, 148, 151
- not to act as trustee should be shown by disclaimer, 10
  - mode of disclaimer [*see* DISCLAIMER]
- as to time of payment of portions [*see* PORTIONS]
- to bind separate estate, how shown, 260
- restraint on anticipation, to impose, 266

## INTEREST,

- more than rents of property mortgaged, where, 142
- on debts or legacies, right to, unaffected by delay in sale, 115
  - legacies, from the death, where, 115, 116
    - petition for advice as to, 110
- on portions [*see* PORTIONS]
- proof for, against bankrupt trustee, 219
- on rents of trust estate bought by trustee, 191
- on price of trust estate bought by trustee, *ib.*
- breach of trust, payable by trustees, on, 283
  - 4 *per cent.* on uninvested balances, *ib.*
  - solvency no excuse, *ib.*
  - not more than 4 *per cent.* except for fraud, *ib.*
    - nor where trusts onerous, *ib.*
    - nor where legacy unpaid, *ib.*
    - nor where wrong payment *bonâ fide* made, *ib.*
    - nor where security given at higher rate, 284
  - prayer for, not required, *ib.*
    - except for compound interest, *ib.*
  - certificate, not charged on sum found by, *ib.*
  - legal delay no ground for, *ib.*
  - Statute of Limitations does not affect, *ib.*
    - nor does 1 & 2 Vict. c. 110, *ib.*
  - 5 *per cent.* where breach of trust direct, *ib.*
  - ground of rule, 285

INTEREST—*continued*.

- not charged as penalty, *ib.*
- where stock sold out, *ib.*
  - good securities called in, *ib.*
  - money kept with fraudulent intent, *ib.*
  - misrepresentation, *ib.*
  - false accounts, *ib.*
  - refusal to account, *ib.*
  - omission to invest at "best" interest, *ib.*
- receiver chargeable with, 286
- bankruptcy trustee chargeable with, *ib.*
- trade, on money embarked in, *ib.*
  - inquiry as to profits, *ib.*
  - interest or profits, not both, charged, *ib.*
  - interest as to part and profits as to part, 286
  - persons joining in risking trust-money in, liable to, *ib.*
- compound interest* where breach of trust to accumulate, 287
  - trade, embarking in, where trustee interested, *ib.*
  - or where profits to be capitalised, *ib.*
  - adding order as to, to decree, 328
- attachment for non-payment of [*see* ATTACHMENT]

## INTERIM INVESTMENT

- of money to be laid out in land, 147 [*see* INVESTMENT]

## INTERLOCUTORY APPLICATION

- for appointment of receiver, 272
  - ex parte*, *ib.*
  - before writ, *ib.*

## INTERROGATORIES

- as to plea of purchase without notice, 294
- by defendant as to trusts, 193

## INTESTACY,

- payment to Crown on, and default of next of kin, 236

## INTESTATE,

- widow of, right of, to share where no next of kin, 244

## INVESTMENT,

- delegation of trust for, to co-trustee, 17
- improper, getting in, 87
- receiver on omission of, 272
- remedy for omission of, 324
  - compulsory payment into Court, where, 275
- of balances, 87
- not sanctioned by Court, to be sold, when, 91

INVESTMENT—*continued.*

- power to continue, or vary, effect of, on duty to sell wasting property, 93
- opinion of Court, petition for, as to, 109 [*see* ADVICE PETITIONS]
- deposit at interest in bank is not, 99
- sums till, may be placed in bank, 98
  - left, how long, *ib.*
- by bankers, order by trustees for, loss by, 99
- in joint names of husband and wife, by husband, effect of, 64
  - adding stranger's name, effect of, *ib.*
- in names of settlement trustees, by husband, *ib.*
- by widow in names of herself and child, *ib.*
  - daughter and her husband, *ib.*
- voluntary trustee liable for loss by bad, 240
- where no power of, 131
- retention of Navy Fives instead of, *ib.*
- on other than permanent securities, 132
- under *Lord St. Leonards' Act*, s. 32, *ib.*
  - made retrospective by 23 & 24 Vict. c. 38, s. 12, *ib.*
  - rights accrued between the two Acts, *ib.*
- under *Lord Cranworth's Act*, reinvestment under, 133
  - Acts probably not apply where no power to vary, 134
- under s. 12 of 23 & 24 Vict. c. 38, as "cash under control of Court" may be invested, *ib.*
- under *Settled Estates Act*, 1877, s. 36, as "cash under control of Court," *ib.*
- under *Lynch's Act* in Irish mortgages, *ib.*
  - practice under, 135
  - consent under, *ib.*
- in *Bank Stock* under *Lord St. Leonards' Act*, 131
  - Order of 1 Feb. 1861, 133
- change of, into *Bank Stock*, 135, 136
- in *Consols*, where no power to invest, 131
  - where only power of, on mortgage, *ib.*
  - liability for fluctuations of, *ib.*
  - not variable without power, 132
  - of balances under *Lord Cranworth's Act*, s. 25, 133
  - transposition of, with consent of *c. g. t.*, 134
- in  $2\frac{1}{2}$  *Per Cents.* under Order 1 Feb. 1861, 133
- in *Reduced*, under Order 1 Feb. 1861, *ib.*
- in *New Threes*, under Order 1 Feb. 1861, *ib.*
- in *Parliamentary Securities* [*see*, in *Government Securities*]
- in *Public Securities* [*see*, in *Government Securities*]
- on real security, [*see* ON MORTGAGE]
- in *East India Stock* under *Lord St. Leonards' Act*, 131
  - retention of, 132
  - under Order 1 Feb., 1861, *ib.*

INVESTMENT—*continued.*

- since 30 & 31 Vict. c. 132, extends to all, charged on revenues of India, 133
  - includes "India Stock," *ib.*
    - not Indian Railway Stock, *ib.*
    - under Lands Clauses Act, 134
- change of, into East India Stock, 135
- in East India Stock, loss by redemption of, 236
- in *Indian Railway Stock* not within 30 & 31 Vict. c. 132, s. 1, 133
- in *Exchequer Bills* under Order 1 Feb., 1861, 132
  - for temporary purposes, 100—132
  - by the Court, *ib.*
  - in East India Stock instead of, 134
- in *Foreign funds*, includes what, 139
  - French railway shares, *ib.*
  - American securities, *ib.*
- in *Government securities*, liability for fluctuation in, 131
  - or "good securities," retention of Navy Fives, instead of, *ib.*
  - of East India Stock, *ib.*
  - where interest to be paid on certain days, 132
  - in *Exchequer Bills*, as, *ib.*
- under power of, trustees may invest in same as cash in Court, *ib.*
- of balances, and transposition with consent of *c. q. t.*, 133, 134
- guaranteed by Parliament, under 30 & 31 Vict. c. 132, s. 2, 134
- in Metropolitan Consolidated Stock under power of, *ib.*
  - where fund in Court, *ib.*
- "Public Stocks" what are, 139
- in *Debenture Stock*, 134
  - foreign, 139
- in *Railway Stock*, *ib.*
- in *Railway Preference Stock*, 132, 139
  - charged on profits only, 139
  - with fixed rate of interest, *ib.*
  - transferable into single name, *ib.*
- in *new shares*, *ib.*
- liability of trustees for calls, 140
- notice of trust not received by company, *ib.*
- apportionment of coupon, *ib.*
- change of* into higher dividend-paying security, 135
  - where tenant for life's income adequate, *ib.*
  - where settlor having power of revocation desires it, *ib.*
  - to increase fund for maintenance, *ib.*
  - to secure specified income, *ib.*
  - where aged childless woman entitled absolutely in default of issue, 136

INVESTMENT—*continued.*

- mode of preventing three dividends on, *ib.*
- claim for trust stock transferred to National Debt Commissioners, 144
- in *trade*, 137
  - rights of creditors on, *ib.*
- on *personal security*: what is, 136
  - not permitted without power, *ib.*
  - solvency of debtor no excuse, *ib.*
  - discretion as to, *ib.*
  - under power to “place out at interest,” *ib.*
    - not to risk money in trade, *ib.*
    - to “lend at best security,” *ib.*
  - promissory note only evidence of debt, *ib.*
  - distinction between getting in, and, 137
  - loan to banker, *ib.*
  - deposit in bank is not investment, 99
- on *bond*, 136
  - solvency of debtor, *ib.*
  - concurrence of sureties, 137
  - under power to invest on real, heritable, or personal security, *ib.*
  - renewal of, on majority of minor, 138
- on *promissory note*, 136
  - solvency of acceptor, *ib.*
  - under power to lend on “best security,” *ib.*
  - of banker, bearing interest, 137
- consent of *c. q. t.* as to, *ib.*
  - of trustees, *ib.*
  - ex post facto*, 138
  - in writing, *ib.*
- loan to husband, 137, 138
  - to co-trustee, 138
  - to tenant for life, *ib.*
  - to A. and B. authorises loan to either, *ib.*
  - renewal of to minor on majority, *ib.*
  - on equitable deposit of deeds, 138
- in *land*,
  - waiver of defects of title on, *ib.*
  - title, good holding, enough, 144
    - reference by Court as to, form of, *ib.*
    - waiver of defects on, *ib.*
  - 40 years’ under Vendor and Purchaser Act, 1874, *ib.*
    - when less than, *ib.*
  - Vendor and Purchaser Act*, trustees need not exclude, *ib.*
    1. lessor’s title need not to be asked for, *ib.*
    2. recitals 20 years’ old binding, 145
    3. equitable right to production of deeds sufficient, *ib.*

INVESTMENT—*continued.*

- 4. costs of covenant to produce, *ib.*
- 5. right to retain deeds, *ib.*
- decision of Judge, *ib.*
- presumption of, in accordance with trust, 305
  - poverty of trustee no guide, *ib.*
  - ground of, *ib.*
  - identity of price, 306
- following trust money into land purchased with it [*see FOL-  
LOWING TRUST ESTATE*], *ib.*
- under trust to sell and re-invest in land, 146
  - implied power of sale of purchased land, *ib.*
- discretion as to, not controlled by Court, *ib.*
  - alteration of rights by exercise of, *ib.*
- on request of *c. q. t.*, *ib.*
  - inquiry as to, *ib.*
- with sale moneys of gavelkind lands, *ib.*
- house property*, purchase of, under power of, *ib.*
  - where fund in Court, *ib.*
- freehold *ground rents*, *ib.*
- copyholds for lives*, *ib.*
- leaseholds for lives*, 147
- mines* without surface, *ib.*
- wood estate*, *ib.*
- equity of redemption*, *ib.*
- advowson*, *ib.*
- where to purchase with all convenient speed, *ib.*
- apportionment of dividend where stock sold for, *ib.*
- specified estate, in, *ib.*
- interim investment till completion of, *ib.*
- on *mortgage* under Lord St. Leonards' Act, 131
  - where no power of, *ib.*
    - remedy, 324
  - where trust to invest in Consols, 131
  - where no trust to invest, *ib.*
  - in Exchequer Bills until, 132
  - under Order, 1st Feb., 1861, *ib.*
  - under Land Improvement Act, 1864, 134
  - by charities and corporations, under 33 & 34  
Vict. c. 34, *ib.*
  - in Ireland under Lynch's Act, 133, 134
  - trust for, does not authorise bond, 137
  - by deposit of deeds, 138
  - of freehold land, not more than two-thirds of  
value, 140
    - house, not more than half, 141
    - copyhold, *ib.*
    - hotel, *ib.*



INVESTMENT—*continued.*

- place of amusement, *ib.*
- trade property, *ib.*
- renewable leaseholds, *ib.*
- deficient security, liability for, on, *ib.*
- valuation on, *ib.*
  - by mortgagor, *ib.*
  - by *c. q. t.*, *ib.*
  - of speculative property, *ib.*
  - trade property, *ib.*
- unfinished houses, *ib.*
- freehold ground rents, 142, 143
- where rental less than interest, *ib.*
- re-valuation on re-investment, *ib.*
  - fresh incumbrances, liability where, *ib.*
- improper advance, liability of dead trustee on, *ib.*
- second mortgage, *ib.*
- deed to be executed, *ib.*
- different solicitor from borrower's to be employed, *ib.*
- fraud or forgery by solicitor, 142
- "real security" does not include leaseholds, 143
  - life interest, *ib.*
  - judgment, *ib.*
  - Scotch mortgages, *ib.*
  - turnpike bonds, *ib.*
  - railway mortgages, *ib.*
- of leaseholds, length of term on, *ib.*
  - not under power to advance on "land," *ib.*
  - stock mortgage, *ib.*
  - without power of sale, *ib.*
- rate of interest where trustees benefited, 143, 324
- of co-trustee's property, 143
- receipt on, under power to invest "in securities," 125
  - "on security," *ib.*
  - under power to vary, *ib.*

## IRELAND,

- provisions of Thellusson Act, extend to, whether, 153
- mortgages of land in, under Lynch's Act [*see* INVESTMENT]
- mortgage of judgment in, whether breach of trust, 143
- attachment for disobedience of order in, 277

## IRREVOCABLE TRUSTS

- for creditors [*see* CREDITORS]

## ISSUE,

- in articles construed to include females, 46
- in wills, remainder over in executory trusts, to, 48
  - on death without, *ib.*
- included in "heirs of the body," where, 49
- male, failure of, daughters taking portions on, 161
- probability of, with regard to changing investment in favour of life-tenant, 136

## JEWELS,

- separate estate in, disposal of, 261
- executory trust to take, as heirlooms, 51

JOINT AND SEVERAL LIABILITY [*see* BREACH OF TRUST]

## JOINT LESSEE,

- renewal by [*see* CONSTRUCTIVE TRUSTS]

JOINT TENANCY [*see* SECRET TRUSTS], 81

- construed tenancy in common in articles, 46
  - in wills, where, 49
- limitation in articles to "children" imports, 46
- of donee and children under precatory trust, 57

## JOINTURE,

- power to, is not "usual power" in settlement, 50
- where prior to portion trust, 163
- purchase of, by receiver, 188

## JUDGMENTS,

- notice of, does not affect purchaser, when, 129

JUDGMENT CREDITOR [*see* CREDITOR]

- notice gives no priority to, 291

## JURISDICTION,

- discretion of Court of co-ordinate, 175
- of Chancery Division in bankruptcy matters, 188
- over trusts of foreign property [*see* FOREIGN PROPERTY]
- out of, trustee going, *ne exeat*, where [*see* NE EXEAT]
  - receiver where, 273
  - c. q. t.* taking title deeds, 226
- trustees accounting where vouchers with agent out of, 18

LACHES [*see* DELAY ; STATUTE OF LIMITATIONS]

**LAND,**

following trust money into, 304 [*see* FOLLOWING TRUST ESTATE]

**LEASE,**

trust to, for indefinite time, passes fee, 6  
     effect of Wills Act in such case, *ib.*  
     same with duty to pay taxes and repair, *ib.*  
 by trustees to themselves, 185, 186  
     under power, 185  
     to relative of trustee, *ib.*  
     of trust estate bought by them, 192  
 of trust estate to himself, removal of trustee, after, 215  
 by agent to himself, 185  
 by special agent, 186  
 by tenant for life, under a power, to trustee for himself, *ib.*  
 by married woman [*see* SEPARATE ESTATE]  
 surrender of, power to take, passes legal fee, 6  
 trustee cannot grant, without power, 102  
 definite power to, gives legal estate while it lasts, 8  
 power to, petition for advice as to, 109  
 power to grant, is "usual power" in settlement, 50  
 building, power to grant, is "usual power," *ib.*  
 on fines by trustees, to pay debts, not where forbidden to sell,  
     155  
 not authorised by power of sale, 123  
 to raise portions [*see* PORTIONS]  
 agreement for, equitable interest in, voluntary trust of, 28  
 renewal of [*see* RENEWAL OF LEASE]

**LEASEHOLD**

duration of legal estate in, 2  
 not within Statute of Uses, 1  
 vesting legal estate in, in trustees, *ib.*  
 renewal of, by trustees and others [*see* CONSTRUCTIVE TRUSTS]  
 renewable, mortgage of [*see* INVESTMENT]  
 for lives, investment in, 147  
 production of lessor's title on purchase of, 145  
     executors, 124  
 covenants in [*see* COVENANT]  
 indemnity to trustees against covenants of, 121  
 mortgage of, not within power to lend on real security or  
     "land," 143  
     length of term required, *ib.*  
 mortgage instead of sale of, 122  
 to be sold as part of residue, when, 91  
     not if specifically given, 92  
 sale of, petition for advice as to, 109

LEASEHOLD—*continued.*

- and reversion may be sold together, 117
- liability of trustees for insurance of, 100
- notice, doctrine of, not applicable to, 291

## LEAVE,

- of Court, to apply to Parliament, 103
  - to bring or defend an action, *ib.*
- to bid, when given to trustees, 184
  - to partner for partner's share, 188

## LEGACIES,

- trustees to pay debts, &c., take legal fee, 6
  - unless a less estate is intended, 7
- charge of, effect of, on passing legal estate, 4
  - prevents trust estates passing by general devise, 21
  - power to give receipts where [*see* RECEIPT OF TRUSTEE]
  - on land, clearing title by payment of, 101
  - remains on renewed lease, 77
  - creates no express trust, 311
- express trust to pay not saved by Real Property Limitation Act, 1874, 306, 312
  - when barred, *ib.*
- debts barred but directed to be paid do not lapse as, 39
  - but subject to legacy duty, *ib.*
- acceptance by executor of trusts of, by assenting to them, 13
  - by appropriating them, *ib.*
- to children, maintenance out of, 171
  - where accumulation directed, 173
- for education, application of, 180
- separate, under Married Women's Property Act, 250
- to trustee if annexed to office not payable if he does not act, 200
  - no bar to remuneration, *ib.*
- non-investment of, remedy for, 324
- interest on, right to, unaffected by delay in sale, 115
  - retention of, by trustee, where, 110, 283
  - where from the death, 115
- payment of, out of income of first year, 96
- refunding, 231
- petition for advice as to receipt for, 109
- Crown takes where no next of kin subject to, 244

## LEGACY DUTY,

- in case of secret trust for charity, 82

## LEGAL ESTATE,

- vesting*, in trustees, 1—9

LEGAL ESTATE—*continued.*

- by will, 1
- by deed, 8, 9
- taken by trustees if given by words, 8
  - unless inconsistent, *ib.*
- passes under devise to receive and pay rents, 3
  - to pay clear rents, *ib.*
  - net rents, *ib.*
  - where receipts with approval of trustees, *ib.*
  - where trustees to give receipts, *ib.*
  - where separate use, *ib.*
  - in trust for maintenance, *ib.*
    - to pay debts, *ib.*
    - debts and legacies, 4
    - until debts paid, *ib.*
    - money raised, *ib.*
  - on devise of freeholds, 1
    - copyholds, *ib.*
    - freeholds and copyholds, 3
  - on trust of leaseholds, 1
- quantum of*, independent of nature of property, 2
  - under Wills Act, whole fee or term to pass unless less given by will, s. 31, 4
  - same where no beneficial life estate, or trusts last beyond life, s. 32, *ib.*
  - extent of, in term, 2
  - vests if trustees have duties to perform, *ib.*
  - primâ facie* devise to trustees and their heirs
    - passes fee, 4
    - secus* if not required, 5
  - trusts indefinite, not cut down, where, *ib.*
  - onus on those who say less intended, *ib.*
  - where trust to pay annuities, *ib.*
  - in fee, trustees take, under what devises, *ib.*
    - upon trust to sell, *ib.*
    - to mortgage, *ib.*
  - where power to take surrender of lease legal fee
    - passes, 6
- fee*, taken on devise in trust to pay debts, *ib.*
  - or debts and legacies, *ib.*
  - unless a less estate is intended, 7
  - under indefinite power to lease, 6
  - effect of Wills Act in such case, *ib.*
  - where duty to repair and pay taxes, *ib.*
  - with power to cut timber, *ib.*
  - by executors under indefinite devise, 7
  - by "trustees of inheritance," *ib.*

LEGAL ESTATE—*continued*.

- by trustees "as also their heirs and assigns," *ib.*
- where contingent remainder to be preserved after life estate, 6
- trustees retain fee taken, where power of sale to pay debts, *ib.*
- devises* under which, does *not* pass, 2, 3
  - to A. to use of B., 2
  - to "permit and suffer" rents to be received, *ib.*
  - to "pay or permit," *ib.*
  - to "pay or permit and suffer," *ib.*
  - charge of debts, *ib.*
  - where equitable estate only devised, *ib.*
  - where trusts fail, 3
- where it passes to trustees *by deed*, 9
  - trust to preserve after legal life estate, *ib.*
  - power of appointment before legal gift over, *ib.*
  - power under which contingent remainders could be created, *ib.*
- not cut down by equitable term in other trustees, 9
  - power of leasing in tenants for life, *ib.*
- less than fee* taken by trustees, where, 7—8
  - on devise to transfer copyholds, 7
  - where prior legal life estate, 8
    - definite leasing power, *ib.*
    - estate *pur autre vie* expressly given, *ib.*
    - for maintenance during minority, *ib.*
    - legal gifts over, *ib.*
    - until contingent remainders cease, *ib.*
- pur autre vie*, when taken by trustees, 7
- chattel interest, when taken, *ib.*
- unexhausted by trusts, resulting trust, where, 58
  - secus* where, given for particular purpose, *ib.*
- devise of, in trust and mortgage estates, 21—24
  - [*see* DEVISE OF TRUST ESTATES]
- outstanding, conveyance of, 122
  - protection to separate estate by, 247
- disclaimer of one trustee, vests, in others, 11
- vests in heir, when all trustees disclaim, 12
- conveyance of, by trustees [*see* CONVEYANCE]
  - to alienee by trustees to separate use, effect of, 258
- transfer of, where *c. g. t.* has disposed of equitable estate, 206
- to be transferred on voluntary settlement of equitable estate, 28
- voluntary trust of equitable estate not void by getting in, 35
- Crown, when vested in, how trust enforced, 242
- escheat and forfeiture of, abolished, 243

LEGAL ESTATE—*continued*

- title to, of purchaser without notice, may be shown by deed
  - disclosing trust, 294
  - defective, not aided, *ib.*
  - equal equities, where, *ib.*
- got in after notice, no protection, 296
  - by equitable mortgagees, 297
  - from trustee for mortgagees, *ib.*
  - from trustees of term, *ib.*

## LEGAL RIGHT,

- compelling trustee to enforce [*see* TRUSTEE]

## LEGATEE,

- refunding by, 40, 329

## LESSEE,

- within Act of Elizabeth, 36

## LESSOR,

- lease by, without consideration, results to, 60
  - except to wife or child, *ib.*

## LETTER,

- voluntary trust by, 31
  - signature of, 32

## LETTERS PATENT,

- trust of land declared by Crown, by, 242

LEX LOCI [*see* FOREIGN PROPERTY]

## LIABILITY

- on shares, reason for speedy sale, 89
- none for not accepting compromise, 88
- of co-trustees for misappropriation of dividends, 15
  - rents, 15
- of trustee on not executing transfer to new trustee, 207
- of trustee for defaults of co-trustee [*see* CO-TRUSTEE]
- for breach of trust [*see* BREACH OF TRUST]

## LIEN,

- on deeds for money advanced by trustees out of pocket, 102
- of consignee on West Indian estate, 199
- of joint purchaser for improvements, 70
- for expenses of renewal, of constructive trustee of renewed
  - lease, 78
  - for improvements, *ib.*
  - of tenant for life, 78, 150
- of husband for payment of charge on separate estate, 248
- vendör's [*see* VENDOR]

LIFE ESTATE [*see* TENANT FOR LIFE]

after legal, in a deed, trust to preserve requires legal fee in trustees, 9

mortgage of, not within power to lend on real security, 143

## LIMITATION,

of legal estate [*see* LEGAL ESTATE]

words of, "heirs of the body" construed as, in executory trusts, where, 44

LIMITATIONS [*see* STATUTE OF LIMITATIONS]

## LIMITED OWNERS' RESIDENCES ACT, 1870

building mansion-houses under, 106

## LIQUIDATION,

separate estate in, rights against, 265

## LIVELIHOOD,

gift for, of wife, where creates separate use, 248

## LOAN,

to husband [*see* INVESTMENT]

out of separate estate, 249

## LONG ANNUITIES,

to be sold when, 91—97

if annuity charged on them, 93

## LOSS,

by voluntary trustee, 240

liability for, by robbery, 98

fraud, *ib.*

failure of bank, 98, 99

by postponement or acceleration of sale, 116

of part of estate, form of order appointing new trustees after, 207

improvement of part of trust estate not excuse for, of the rest, 327

of title-deed, effect of, on right of *c. q. t.* to conveyance of legal estate, 223

following trust funds dissipated by, not possible, 301

receiver appointed on, of part of trust fund, 272

## LOTS,

sale by trustees in, 112

LUNATIC [*see* MAINTENANCE ; COMMITTEE]

"unable to act," trustee found, is, 211



LUNATIC—*continued*.

- wife, cannot consent to dealing of husband with separate estate, 249
- not barred by possible discovery of fraud, 322

LYNCH'S ACT [*see* INVESTMENT]

## MAINTENANCE,

- trust for, gives legal estate till 21, 8
- conversion of wasting property given for, when, 93
- change of investment to increase fund for, 135
- excessive advancement made up out of fund for, 181
- out of portions [*see* PORTIONS]
- and support not enough to create separate use, 256
- of husband out of separate estate, 263
- of children out of separate estate, *ib.*
- of lunatic wife out of separate estate, 249
- statutory power of, under Lord Cranworth's Act, s. 26, 171
  - not retrospective, *ib.*
  - not available between 21 and 25, *ib.*
- petition for advice as to, 109
- general power to give, out of legacy by parent, 171
  - by person *in loco parentis*, 172
  - to grandchildren, *ib.*
  - where accumulation directed, 173
- power of, is "usual power" in settlement, 50
- out of contingent legacies, by Court, 172
  - where gift over to persons not *in esse*, *ib.*
  - to unborn children, *ib.*
- out of future legacy, intention as to, *ib.*
- extends till 21, though given for less period, 173
- by trustees, without power, where, *ib.*
- father's ability, discretion as to, notwithstanding, *ib.*
  - inquiry as to, *ib.*
  - power of trustees not controlled by, *ib.*
  - trust*, to be performed without regard to, *ib.*
  - unless settlement voluntary, *ib.*
  - insolvency need not be shown to rebut, 174
- mother's ability, inquiry as to, *ib.*
  - after second marriage, *ib.*
- after removal from father's custody, *ib.*
- past, right of father to, *ib.*
  - mother to, *ib.*
  - stranger, 176
  - where allowed, *ib.*

MAINTENANCE—*continued.*

- what allowed as, 176
- how raised, *ib.*
- discretion as to, when interfered with by Court, *ib.*
  - after action, 175
  - payment into Court, *ib.*
  - of Court of concurrent jurisdiction, *ib.*
- implied trust for, *ib.*
- of adult daughter, *ib.*
  - son, *ib.*
  - idiot, *ib.*
- amount of, *ib.*
  - discretion to increase, *ib.*
- includes education, when, *ib.*
- past income for, power to apply, *ib.*
- opinion of Court as to [*see* ADVICE PETITIONS]
- out of capital, payment of, by Court, 176
  - by trustee, *ib.*
  - inquiry as to, *ib.*
- two funds for, out of which to be raised, *ib.*
  - defeasible and absolute, 177
  - where wrong fund applied, *ib.*
  - discretion as to which fund, *ib.*
- account as to money applied for, *ib.*
- after bankruptcy of life-tenant, *ib.*
  - discretion as to, *ib.*
  - alternative, 178
- receiver where trustees neglect to raise, 273

## MAJORITY,

- restrictions on enjoyment after, void, 84
- vesting and payment of portions at [*see* PORTIONS]
- of charity trustees can bind minority, 15

MANAGEMENT [*see* ADVICE PETITIONS]

- power of, [*see* POWER]
- when it gives possession to trustees, 221
- is "usual power" in settlement, 50

## MANAGER,

- receiver and, of business, 273

## MANOR

- waste of, grants of, by trustees, 107, 108

## MANSION-HOUSE,

- power to rebuild, 105
  - make lateral additions to, *ib.*
  - repair, 105, 106

**MANSION-HOUSE**—*continued*.

- building under Limited Owners' Residences Act, 1870, 106
- on land subject to trust for sale, *ib.*
- possession, right to, of *c. q. t.*, 221

**MARRIAGE**,

- consideration of, position of remaindermen as to, 32
- voluntary settlement by *feme sole*, till, 32
- consent to, power of trustees to, [*see* CONSENT]
- advancement on, 179
- vesting and payment of portions on [*see* PORTIONS]

**MARRIAGE ARTICLES**,

- executory trust in [*see* EXECUTORY TRUSTS]

**MARRIAGE SETTLEMENT**,

- separate use, contract for, in, 248
- where property not vested in trustees, *ib.*

**MARRIED WOMAN** [*see* SEPARATE ESTATE]

- legal estate passes to trustees where separate use for, 3
- separate use, entitled to, may call on trustees to convey legal estate, 223
- direction to settle on, too vague, 50
- voluntary trust declared by husband for, 32
  - proof of separate use, *ib.*
  - of promissory note, *ib.*
- consent of, in Court to transfer to husband, *ib.*
- where trustee under secret trust, marital right also subject to it, 81
- trustee cannot contract for sale, 114
- share of, in partnership assets, 71
- advancement out of fund of, to husband, 179 [*see* ADVANCEMENT]
- appointment by will of, payment under, 232
- selling trust estate to trustee must acknowledge deed, 184
- release by, of breach of trust, 337
- concurrence of, in breach of trust, 334
- knowledge of husband does not bind, *ib.*
- liability of separate estate of, for breach of trust, *ib.*
- following trust estate into hands of husband, 303

**MARRIED WOMEN'S PROPERTY ACTS** [*see* SEPARATE ESTATE]**MARSHALLING**

- in favour of portionists, 166
- between creditors and portionists, *ib.*

**MEMORANDUM**

- of intention "to leave," &c., no trust, 34

## MEMORIAL .

by illegitimate children of intestate, 244

## MERGER

of portions [*see* PORTIONS]

MERITORIOUS CONSIDERATION [*see* CONSIDERATION]

## MESNE PROFITS,

account of [*see* STATUTE OF LIMITATIONS]

by trustee purchasing trust estate 191

## MINES

without surface, investment in, 147

sale of surface without, under Settled Estates Act, s. 19, 118 ;

by trustees, under 25 & 26 Vict. c.

108, *ib.*

petition under, *ib.*

sale of, to raise portions, 165

pay debts, 154

renewal of lease of, by partner [*see* CONSTRUCTIVE TRUSTS]

MINOR [*see* MINORITY ; MAINTENANCE ; ADVANCEMENT ; PORTIONS ;  
INFANT]MINORITY [*see* INFANT ; ADVANCEMENT ; PORTIONS]

maintenance during [*see* MAINTENANCE]

accumulation during, under Thellusson Act, 153

of unborn child, accumulation not allowed during, 154

how far good, *ib.*

trust of term during, 2

of trustee, no excuse for delay in selling, 115

of charity trustees bound by majority, 15

MISAPPLICATION [*see* BREACH OF TRUST]

by co-trustee, liability of trustee for [*see* CO-TRUSTEE]

by solicitor, 19

by stranger, 100

by broker, *ib.*

possible, by representative of *c. q. t.* no excuse for non-payment

by trustee, 232

of money due on husband's bond, 87

MISAPPROPRIATION [*see* BREACH OF TRUST]

co-trustees liable for, of rents received by co-trustee, 15

dividends, *ib.*

MISDEMEANOUR [*see* CRIMINAL LIABILITY]

trustee, misappropriation by, is, 281

## MISDESCRIPTION

by trustees, 121  
compensation for, *ib.*

MISREPRESENTATION [*see* FRAUD]

of *c. q. t.*'s interest by trustee, 232  
interest payable by trustees for, 285

## MISTAKE,

rectification of settlement on ground of, when not according to articles, 45  
illegal trust founded on, 85  
investment by, in unauthorised securities, 143  
bar by acquiescence in case of, 318  
as to feme covert's interest in separate estate, 260  
as to fund out of which maintenance ought to be given, 177  
payment by trustee to wrong person by, 230, 231  
interest where wrong payment by, 283  
mesne profits in case of, 323

MIXED FUND [*see* BLENDING ; FOLLOWING TRUST ESTATE]MIXING [*see* BLENDING ; FOLLOWING TRUST ESTATE]

trust funds by trustees with their own, following money after, 301, 302  
accounts of trust with trustee's private accounts, 228

MONEY [*see* FOLLOWING TRUST ESTATE]

what, passes as separate estate, 252

MORTGAGE [*see* MORTGAGOR ; MORTGAGEE ; EQUITY OF REDEMPTION]

petition for advice as to, 109  
Trustee Acts do not apply to, where, 210  
power to, authorises mortgage with power of sale, 123  
under 23 & 24 Vict. c. 125, s. 11, *ib.*  
by executors, *ib.*  
by Court, *ib.*  
investment on [*see* INVESTMENT]  
investment on, instead of Consols, remedy for, 324  
non-investment on, by solicitor-trustee, remedy for, *ib.*  
not authorised by trust for conversion, 122  
where leaseholds given in succession, *ib.*  
where charge to be raised, *ib.*  
supported as being conditional sale, *ib.*  
where no mode of raising charge pointed out, *ib.*  
onus to prove necessity for, 123  
by executors, *ib.*  
remedy of mortgagee, *ib.*  
should be called in, when, 90  
trustees should not leave purchase-money on, 120

MORTGAGE—*continued.*

- for making payments, trustees to, take fee, 5
- trust to pay debts authorises, 101
- trustees may not, to pay debts, when forbidden to sell, 155
- trust for sale to pay off, allows sale subject to, 124
- to secure costs, 190
- receipt for money on, under Lord St. Leonards' Act, 124
- debt [*see* DEBTS]
- by trustees for expenses of renewal, 148
- on renewal of leases by life-tenant keeps down interest on, 151
- rights of mortgagee in, voluntary trust of, 30
- injunction to restrain sale by trustee under, 280
- by eldest son, effect of, on right to portion, 158
- by trustees to raise portions [*see* PORTIONS]
- raising portions by, effect on vesting, 160
- by tenant for life of fee, 226
  - does not prevent his appointing new trustee, 214
- by father, effect of, on gift by way of advancement, 66
- joint [*see* RESULTING TRUSTS, 69—71]
- by married woman restrained from anticipation, 267
- widow when entitled to dower of land in, 269, 270
- equitable, by deposit of deeds in hands of co-trustee, 240
- proof against bankrupt trustee where money traced into, 219
- for value without notice [*see* FOLLOWING TRUST ESTATE]
- not an express trust under Statute of Limitations, 310
  - though taken by way of trust for sale, *ib.*
  - in the name of a trustee for mortgagee, *ib.*
- secus*, as to trust of surplus sale moneys, *ib.*
- as to exercise of power of sale in case of fraud, *ib.*

MORTGAGEE [*see* MORTGAGE ; MORTGAGOR ; EQUITY OF REDEMPTION]

- purchasing from mortgagor, rule as to, 186
  - under power of sale, *ib.*
  - equity of redemption, *ib.*
    - where mortgagor distressed, *ib.*
    - by solicitor-mortgagee, *ib.*
  - second mortgagee, *ib.*
    - where trustee for sale 187
- renewal by, in his own name, subject to old equity of redemption, 75
  - by mortgagor, enures for, 76
- let into possession to manage, not entitled to bonus, 196
- partner of auctioneer not to charge commission on sale by firm, 197
- in possession not to charge for receiving rents, *ib.*
  - may employ receiver or bailiff, *ib.*
  - of colonial estate, *ib.*

MORTGAGEE—*continued*.

- cannot contract with mortgagor for allowance as receiver, 201
- solicitor who is, cannot charge profit costs for defending his title, 197
  - cannot have commission on rents, where, *ib.*
- rights of, voluntary trust of, 30
- dying, share of, goes to executors, 69 [*see* RESULTING TRUSTS]
- equitable, gets no better title by the legal estate of the mortgagor-trustee, 297
- subsequent, within Act of Elizabeth, 36

MORTGAGE ESTATE [*see* DEVISE OF TRUST ESTATES]MORTGAGOR [*see* MORTGAGEE ; MORTGAGE]

- sale by, to mortgagee, 186
- renewal by, enures for mortgagee, 76
- agreement by, to give mortgagee allowance as receiver, 201

MORTMAIN [*see* PERPETUITIES, RULE AGAINST]

- secret trust in fraud of statute of, 82
  - by reserving life interest, *ib.*
  - devise to take effect on death within year, *ib.*
- mortgages by corporation or charity not in, 134

## MOTION,

- for compulsory payment into Court by trustees, 274—276
- for *ne exeat* against trustee [*see* NE EXEAT]

## NATIONAL DEBT COMMISSIONERS,

- petition for payment of money transferred to, 144

NATURALISATION [*see* ALIEN]

## NE EXEAT,

- where granted, 280
- demand must be equitable, *ib.*
- interest must be present, *ib.*
  - or vested liable to divest, *ib.*
- practice as to, 281

NEGLECT [*see* WILFUL DEFAULT]NEGLIGENCE [*see* LACHES ; WILFUL DEFAULT]

- ulterior consequences of, trustees liable for, 328, 329
- of solicitor, liability of trustees for, 142
- of trustee, as to advancement, 180
- interest payable by trustees for, 283

NEW THREE PER CENTS. [*see* INVESTMENT]

## NEW TRUSTEES, 203—215

- appointment of, under Cranworth's Act, 203
  - petition for advice as to, 109
  - increase of number on, 203
  - power of, is "usual power," 50
    - does not prevent devisee of trust estates acting, 23
  - death of donee of power of, 203
  - rectification of power of, 204
  - separation deed, of, *ib.*
  - creditors' deed, of, 40
  - no power of, Court appoints, where, 204
  - no trustees appointed by testator, Court appoints, where, *ib.*
  - refusal of all trustees to act, on, *ib.*
  - body of trustees ceasing to exist, where, *ib.*
  - de facto* trustees, by, *ib.*
  - corrupt, *ib.*
    - set aside, *ib.*
  - discretion as to, *ib.*
  - pendente lite*, 205
    - parties to action, *ib.*
    - injunction to restrain, 280
  - reference to chambers of, 205
  - fitness, evidence as to, on, 205
  - fund in Court, of, *ib.*
  - death of trustee in testator's life, on, *ib.*
  - retirement on, capricious, of old trustee, *ib.*
  - where questions arise, 205, 206
  - refusal of *c. q. t.* to allow, 206
  - where doubtful if trust at an end, *ib.*
  - transfer to new trustee and continuing trustee on, 206
    - execution of deed on, 207
    - want of confidence in co-trustee, because of, *ib.*
    - indemnity on, *ib.*
      - by Court, 208
      - where new trustee cannot be found, 207
  - order for, where part of estate lost, 207
  - "dying, declining or becoming incapable," on, includes retiring, 208
  - "refusing or declining to act," payment in is, *ib.*
  - disclaimer is desire to retire, *ib.*
    - settlor may appoint on, 10, 208
      - costs, 11
    - "surviving trustee" may appoint on, *ib.*
    - reserving power notwithstanding, *ib.*
  - "acting in the trusts" does not avail if all decline to act, 208



NEW TRUSTEES—*continued*.

- breach of trust, notice of, 207
- assignments, notice of, inquiry need not be made by, 234
- executor, refusal of, to undertake trust, where, 206
  - renunciation by, 208
    - of surviving trustee must transfer to, 214
- "surviving or continuing" does not avail where all retire, 208
  - secus*, where survivor retires, 209
    - where one becomes bankrupt, *ib.*
- sets of trustees, where there are, 209
- felony of trustee, on conviction for, *ib.*
- bankruptcy, on, of trustee, makes him "unfit to act," *ib.*
  - though discharged, *ib.*
  - by the Court, *ib.*
    - under Bankruptcy Act, 1869, s. 117, *ib.*
    - not "incapable to act" on, 219
- abroad, where trustee, 210
  - permanently, *ib.*
  - temporarily, *ib.*
- mortgagee not within Trustee Acts as to, *ib.*
  - where trusts created, *ib.*
- constructive trusts within Trustee Acts as to, *ib.*
- implied trusts within Trustee Acts as to, *ib.*
- infant heir declared trustee, *ib.*
- lunatic is "incapable to act," 211
- selection of persons for, rules as to, *ib.*
  - relations, *ib.*
  - tenant for life, *ib.*
  - cestui que trust*, *ib.*
  - husband, *ib.*
  - solicitor to the trust, *ib.*
  - foreigner, 212
  - infant, *ib.*
  - female, *ib.*
- number of trustees may be increased *ib.*
  - notwithstanding Cranworth's Act, 203
  - diminution of, breach of trust, when, 212
    - by Court, when, *ib.*
- sole trustee, where, 213
  - funds not paid out to, *ib.*
  - retirement of, *ib.*
- given number, reduction to, *ib.*
- conveyance by single deed to, *ib.*
- tenant for life, appointment by, after sale or mortgage, 214
- nomination after, nominee is a trustee, *ib.*
- nominee may exercise powers, *ib.*
- pending appointment of, payment of money into a bank, 19 98
- powers exercisable after appointment of, 214, 215

NEW TRUSTEES—*continued*.

- notice of assignments, inquiry as to, unnecessary on appointment of, 292
- costs of on appointment of, 215
- stamps on appointment of, *ib.*

## NEXT-OF-KIN,

- failure of, rights on, 243, 244
- payment to Crown on default of, 236
- discovered after Crown has taken, right of, 244
- married woman's share under £200 is separate estate, 250

## NOMINEE,

- conveyance to [*see* RESULTING TRUSTS, 66—69]

## NON-ACCEPTANCE

- of trust [*see* ACCEPTANCE]

## NON-PAYMENT

- of money ordered to be paid into Court [*see* ATTACHMENT]

NOTE [*see* PROMISSORY NOTE]

## NOTICE

- of assignments to trustee, unnecessary to bind assignor, 238
  - absence of, effect of, *ib.*
  - where trustees are executors of assignor, 289
  - as against subsequent rights, necessary, *ib.*
  - order and disposition, *ib.*
  - effect of, *ib.*
  - proof of title by assignee giving, 233
  - constructive, to solicitor, 290, 297
    - knowledge in course of trust affairs, *ib.*
  - personal, distinction as to, 298
  - times of, 290
    - priorities according to, *ib.*
  - to person bound to pay, *ib.*
  - real estate, application of doctrine to, 291
    - to leaseholds, *ib.*
    - sale-moneys, *ib.*
    - charge on portion, *ib.*
    - judgment creditors, *ib.*
- of assignment, trustees not entitled to release by assignor, after, 234
- verbal, *ib.*

NOTICE—*continued.*

distringas, 234

charging order, *ib.*proof of, *ib.*

to one trustee is notice to all, when, 291, 292

new trustees not bound to inquire as to, 234, 292

to trustees where power exercised, 234

of trust to purchaser, 293—299

constructive, 297

to solicitor for vendor and purchaser, *ib.*

personal, distinction as to, 298

by nature of transaction, 298

renewal by trustees, 77

recitals, 298

purchasing other part of property, 299

of doubtful equity, *ib.*how and when to be given, *ib.* [*see* FOLLOWING TRUST ESTATE]not required as between settlor and voluntary *c. q. t.* [*see* VOLUNTARY TRUSTS], 28trust for creditors without, revocable, 40 [*see* TRUSTS FOR CREDITORS]

of breach of trust invalidates receipt of trustee, 129

of sufficiency of personalty, effect of, *ib.*of judgments, does not affect purchaser, when, *ib.*

of transfer, neglect by trustees to give, 89

of intended fraud, 233

account of mesne profits where no, of plaintiff's title, 323

of trust not taken by companies, 140

to bring in third party under Order XVI. r. 13, 330

## NOTICE TO QUIT,

service of, by *c. q. t.*, 221

## NUISANCE,

action by *feme covert* for, 265

## OFFER

to buy, how trustees should act as to, 112

ONUS [*see* EVIDENCE]OPENING BIDDINGS [*see* BIDDING]OPINION [*see* COUNSEL]

cases for, production of, 227

of Court, petition for [*see* ADVICE PETITIONS]

## ORDER

- for payment into Court on admission [*see* PAYMENT INTO COURT]
- one of several trustees to receive dividends, 15
- for payment to trustees for time being, 16
- form of, for appointment of new trustees, 205
- where part of estate lost, 207

ORDER AND DISPOSITION [*see* BANKRUPTCY]

- by absence of notice of assignment, 289

## OUTLAWRY,

- escheat, &c., on, not abolished, 243

OUTLAY [*see* PAYMENT]OVERHOLDING [*see* TENANT FROM YEAR TO YEAR]

## OVERPAYMENT

- to *c. q. t.*, refunding [*see* CESTUI QUE TRUST]
- in an action, 231
- of income to tenant for life, *ib.* 327
- of wasting property, 91

## PALATINE COURT,

- discretion of, 175

## PARAPHERNALIA, 248

## PARENT,

- maintenance out of legacy, by, 171 [*see* MAINTENANCE]
- advancement of child to assist [*see* ADVANCEMENT]
- interest of, to support exception of portions from Thellusson Act, 155, 156

## PARLIAMENT,

- trustees cannot apply to, without leave of Court, 103

PARLIAMENTARY SECURITIES [*see* INVESTMENT]

## PAROL

- trust, form of, 33
- release, where, 236
- declaration of trust, proof of, under St. of Frauds, 25, 26, 33
- [*see* STATUTE OF FRAUDS]
- evidence of intention to become trustee under, 33
- evidence to rebut resulting trust, 61
- to prove acceptance of trust, 12

PAROL—*continued*.

- disclaimer by, 10
  - operation on a use, *ib.*
- notice, proof of, 291
- agreement, as to costs of solicitor-trustee, 200

## PARTICULARS,

- description of trustees in, 112

## PARTIES

- to action for breach of trust, 330, 331
- to action with reference to separate estate, 263, 264
  - [*see* SEPARATE ESTATE]
- creditors not, to action by trustee for them to get in assets, 41
- in action against solicitor, joining trustees in, 19

## PARTITION,

- not under trust for sale, 123
- under power of exchange, *ib.*
- power to, is "usual power" in settlement, 50

## PARTNER,

- mixing trust accounts with accounts of, 228
- not a trustee not liable as trustee without notice of trust of money lent to firm, 325
- jointly and severally liable for joining in breach of trust, 326
- may buy deceased partner's share, when, 188
- cannot buy bankrupt partner's share without leave, *ib.*
- leave to bid given to, when, *ib.*
- of solicitor-trustee acting for trust, 197, 305
  - liability of, 325
- receipt for debt by, 39
- renewal by, [*see* CONSTRUCTIVE TRUSTS]
- holds purchases for trade purposes as tenant in common, 70
- deceased, trustees trading with money of, 287
- surviving, allowance for trouble to, 198

## PARTNERSHIP

- advancement by purchase of, 179

## PAYMENTS,

- necessary, discretion to make, 101
  - for building and repairs, 105
  - for drainage, 106
  - inquiry as to, 106
- by trustees to *cestuis que trust*, 230—236 [*see* CESTUI QUE TRUST]
- of legacy, to legatee abroad, petition for advice as to, 109

PAYMENT INTO COURT [*see* COURT]

- fluctuations of stock after, 192
- right of, does not prevent action by trustee, 205
- is "refusing or declining to act," 208
- is discharge to trustee, 237
- by order, upon admission of assets, 274
  - motion for, *ib.*
  - by directors, *ib.*
    - agents, *ib.*
    - plaintiff contingently entitled, *ib.*
  - admission must be clear, 275
    - investment to be specified in notice of motion, 275, 276
  - improper security proved, 275
    - loan on promissory note, *ib.*
    - to trustee's firm, *ib.*
    - to *cestui que trust*, *ib.*
    - on insufficient security, *ib.*
  - before trial, *ib.*
  - at the trial, *ib.*
  - after trial, *ib.*
  - evidence not allowed, *ib.*
  - trust must be admitted, 276
  - unless title clear, not, *ib.*
  - leave to traverse denial of title, *ib.*
  - plaintiff must not make out case from defendant's case, *ib.*
  - breach of trust to be shown, *ib.*
  - attachment for disobedience of, *ib.* [*see* ATTACHMENT]

## PEERAGE,

- trust of money to procure, void, 83
- trusts attempting to control limitations of, void, *ib.*
- executory settlement according to limitations of a, 49
- trust of, not capable of being declared, 242

## PENALTY,

- interest for breach of trust not charged as, 285

## PENSION,

- trust of, 242

## PERPETUITIES, RULE AGAINST,

- trust void as against, 152
  - of term offending against, *ib.*
    - to raise charge at a time too remote, *ib.*
    - to accumulate during recurring minorities, void, *ib.*
    - unless accumulations vest within period, *ib.*

PERPETUITIES, RULE AGAINST—*continued*.

- to enter and manage during minorities under strict settlement, void, 152
- not within Mortmain Act, but void as against, 153
- not void as against, but against Thellusson Act, void for excess, 154

## PERSONAL ESTATE,

- not within s. 7 of Statute of Frauds, 25
- trusts of, may be declared by parol, *ib.*, 33
  - evidence of intention to become trustee, 33
- settlement of, by reference to trusts of realty, 50
- land devised to pay debts in aid of, not required, results, 58
- inquiry whether, deficient, 127
- abroad, jurisdiction as to, 244

PERSONAL SECURITY [*see* INVESTMENT]

- to be got in, 87 [*see* GETTING IN TRUST ESTATE]
- effect of direction "to get in with all convenient speed," 88
  - discretion to vary, *ib.*
  - to get in debt or not, *ib.*
- compulsory payment into Court where trust fund lent on, 275

PETITION [*see* NEW TRUSTEES]

- to appoint new trustee of separation deed, 204
- under Trustee Act, s. 32, to remove trustee, not good, 215
  - validity of deed not decided on, *ib.*
  - rights of parties not affected, *ib.*
  - postponement of under s. 53 to ascertain rights, 216
- for obtaining opinion of Court, 108—110 [*see* ADVICE PETITIONS]
- of right, Crown declared trustee upon, 242
- of trustee for remuneration, 200
- to charge investment for benefit of tenant for life, 135
- under Lynch's Act as to Irish mortgage, *ib.*
- for money transferred to National Debt Commissioners, 144

POLICY [*see* INSURANCE]

- neglect to keep up, by trustees, remedy for, 89, 100, 326
  - where no funds, power or duty, *ib.*
  - trust to keep up, *ib.*
- mode of keeping up, *ib.*
- lien for money paid in keeping up, *ib.*
  - enforced by sale, 327
- to secure maintenance out of infant's reversion, 176
- on life of another, keeping up, not against Thellusson Act, 154
- voluntary trust of: duty of trustees to give notice to office, 30, 89

## PORTIONS, 157—170

*definition of*, 157

term to secure, how limited to trustees, *ib.*

trusts to raise, *ib.*

power to charge under executory settlements, 50

appointment of fund for, by parent, 157

with restraint on anticipation, good, 267

excepted from Thellusson Act, 153

whether charged or to be charged, 155

only where parent has an interest, *ib.*

for children of another person, 156

*who may take*, 157—159

grandchildren, 157

“younger children” meaning of, *ib.*

becoming “eldest son,” 158

eldest son becoming younger child, *ib.*

resettlement by, *ib.*

mortgage by, *ib.*

devise by, to younger son, *ib.*

time of ascertaining who is, 161

younger son taking by descent, 158

eldest daughter treated as younger child, 159

taking estate, *ib.*

where daughters only, *ib.*

child *en ventre sa mère*, *ib.*

where settlor a stranger, 159

grandmother *in loco parentis*, *ib.*

uncle, *ib.*

other persons, *ib.*

children of any marriage, *ib.*

begotten or to be begotten, *ib.*

*vesting of*, 160—162

at 21 or marriage, 160

when time not fixed, *ib.*

not postponed, though time of raising postponed, *ib.*

time of raising specified, *ib.*

right of entry given, *ib.*

trust for sale, *ib.*

covenant to pay, *ib.*

payable on death of life-tenant,  
*ib.*

surviving parent to die “leaving” children, 161

where imperative words as to surviving parents, *ib.*

postponement of, where gift over and cesser of term,  
*ib.*

daughters to take on failure of male  
issue, *ib.*

for prior payment of debts, *ib.*



PORTIONS—*continued.*

- gift to a given number of children, 161
  - to children of former marriage, *ib.*
  - where children by name are portionists, 162
  - condition that daughter's husband should settle, *ib.*
  - trustees to consent to marriage, *ib.*
  - subsequent, *ib.*
- payment of, 162—164
  - when, 162
  - at specified times, and no contrary intention, *ib.*
  - daughters, during surviving mother's life, *ib.*
  - where prior estate in grandfather, *ib.*
  - contrary intention as to, during tenancy for life, 163
  - death without leaving daughter, *ib.*
  - power of appointment, *ib.*
  - revocation, power of, *ib.*
  - reversionary term, *ib.*
  - maintenance deferred, *ib.*
  - condition that male issue to take, *ib.*
  - prior jointure charged, *ib.*
  - postponement till death of life-tenant, *ib.*
  - contingency unascertainable till death, *ib.*
  - no contrary intention where power to order raising
    - during life, *ib.*
    - though term in reversion, *ib.*
  - out of annual profits, 164
- raising, mode of, 164, 165
  - by sale or mortgage at fixed time, 164
    - as soon as may be, *ib.*
    - where term reversionary, *ib.*
    - no term limited, *ib.*
    - rents insufficient, *ib.*
    - intention contrary to, *ib.*
  - by sale, not best means, *ib.*
  - out of accumulations, *ib.*
  - by lease on fine or rack-rent, *ib.*
  - by several mortgages, 165
  - by sale of timber or minerals, where term too short, *ib.*
- amount of, raisable, 165, 166
  - provision against excessive, 165
  - after sale of part of land charged, *ib.*
  - abatement where estate insufficient, *ib.*
  - costs of raising, *ib.*
  - apportionment of, between estates charged, *ib.*
  - withdrawal of one estate from settlement, *ib.*
  - where real and personal estate charged, *ib.*
  - marshalling where one estate subject to prior charge, 166

PORTIONS—*continued.*

- between creditors and portionists, 166
- interest on*, 166, 167
  - 4 per cent. from time when raisable, 166
  - none where payable out of rents, *ib.*
  - where portions raisable under power, *ib.*
  - lashes, by portionists, effect of, *ib.*
  - by way of maintenance from death of parent, 157, 166
    - though term reversionary, 167
    - part maintenance, *ib.*
    - accumulation of interest applied, *ib.*
    - satisfaction by subsequent provision, *ib.*
    - when to begin, *ib.*
    - on expectant portions, *ib.* [*see* MAINTENANCE]
- advancement out of*, 157, 167
  - none unless provided, *ib.* [*see* ADVANCEMENT]
  - "by portion," *ib.*
- sinking of*, 167, 168
  - by death before vesting, 167
  - interim interest does not prevent, *ib.*
  - where condition not fulfilled, 168
  - on default of appointment, when, *ib.*
  - on land to be purchased, when, *ib.*
- merger of*, 168, 169
  - where portionist takes estate, 168
    - becomes tenant in tail, *ib.*
  - none, of distributive accrued share of eldest son, *ib.*
  - prevented by outstanding legal estate in mortgagee, *ib.*
  - none in derogation of creditors or infants, *ib.*
  - intention against, will prevent, *ib.*
  - of part of, where portionist takes part of estate, *ib.*
  - none where no gross sum given for portions, 169
- satisfaction of*, 169, 170
  - by equal or larger legacy, 169
  - by smaller provision, *ib.*
  - small variations not to countervail rule against double portions, 169
  - contingent legacy not a, *ib.*
  - life interest not a, *ib.*
  - reversion not a, *ib.*
  - gift of land, *ib.*
  - gifts of portion and provision to be both by parent, *ib.*
  - where settlement precedes will, *ib.*
  - where by second settlement, 170
  - where parent pays portions himself, intention inferred, *ib.*
  - election, *ib.*
  - evidence as to, *ib.*
- charge on, doctrine of notice applies to, 291

## POSSESSION

- of *c. q. t.* [*see* TENANT FOR LIFE]
- c. q. t.* in, has right to retain title deeds, 226
- of *c. q. t.* not adverse to trustee, 314
- of one *c. q. t.* not adverse to others, 315  
[*see* STATUTE OF LIMITATIONS]

## POSTNUPTIAL SETTLEMENT,

- settlement not made in pursuance of articles is, 45, 46
- meritorious consideration for, 32

## POSTPONEMENT

- of sale [*see* SALES BY TRUSTEES]
- discretion as to, of payment of share, 231

## POVERTY

- of grantee, evidence of, to support resulting trust, 67
- effect of, on sale by mortgagor to mortgagee, 186
- no ground to suppose purchase by trustee is not under trust, 305
- husband's, no ground for charging separate estate, 263  
unless he is chargeable to parish, *ib.*
- receiver not appointed on account of, of trustee, 273
- effect of, as to delay in upsetting purchase of trust estate by trustee, 195
- no ground for relief after long acquiescence, 320
- of defaulting trustee [*see* ATTACHMENT]

## POWER,

- mere, not in nature of trust, not executed by Court, 103  
*secus*, if trustee required to perform, *ib.*  
to distribute, without gift over, *ib.*  
how executed by Court, *ib.*
- of selection by trustees under trust for creditors, 40
- discretionary, cannot be delegated by grant or devise, 20  
of sale, exercise of, by surviving trustee, 122
- transmissibility of, 138
- exercise of, by devisee of trust estates, 23  
where "assigns" omitted, *ib.*, 24
- of appointment before legal gift over requires legal fee in trustees, 9  
same where contingent remainders may be created under, *ib.*  
general, not exercised by tenant for life getting renewal, 75  
exercised by letter in favour of volunteer, 31  
of income of separate estate against husband's right as administrator, 251  
of new trustees [*see* NEW TRUSTEES]

POWER—*continued*.

- new trustee may exercise every, 203
  - power of sale, 214
- appointment under, payment by trustee on, 232
  - to trustees for appointees, *ib.*
  - by married woman, *ib.*
  - primâ facie* good, 234
  - fraud upon power, *ib.*
  - default of, evidence of, *ib.*
- what powers inserted in settlement under executory trust, 50
  - "usual powers : " of management, *ib.*
    - leasing, *ib.*
    - building leases, *ib.*
    - sale and exchange, *ib.*
    - partition, *ib.*
    - transposition of securities, *ib.*
    - appointment of new trustees, *ib.*
    - maintenance and advancement, *ib.*
  - not jointuring and portioning, *ib.*
  - power to appoint to husband, when, *ib.*
  - as counsel shall advise, *ib.*
- of advancement [*see* ADVANCEMENT]
- of attorney [*see* POWER OF ATTORNEY]
- to advance to husband, taking his bond is not proper exercise of, 88
- to consent to marriage, by trustees [*see* CONSENT]
  - effect of disclaimer on, 12
- of investment [*see* INVESTMENT]
- of leasing, petition for advice as to exercise of, 109
  - without express, trustees cannot grant leases, 102
  - in tenant for life consistent with legal fee in trustees, 9
  - definite, gives legal estate while it lasts, 8
  - indefinite, passes fee, 6
    - under Wills Act, *ib.*
- to take surrender of lease passes legal fee, *ib.*
- of renewing lease [*see* RENEWAL OF LEASES]
- to lend on real security [*see* INVESTMENT]
- of maintenance [*see* MAINTENANCE]
- of management, during minorities under strict settlement, too remote, 152
  - making permanent improvements under, 106
- to make improvements under 27 & 28 Vict. c. 114 [*see* IMPROVEMENTS], 107
- to apply accumulations in building, 105
- to cut timber, trustees with, take legal fee, 6 [*see* TIMBER]
- of trustees, to work open gravel pits, 107
- to grant waste of manor, 107, 108

**POWER**—*continued*.

- to mortgage or sell gives no power to give receipts, 125
- to mortgage, authorises mortgage with power of sale, 123
  - under 23 & 24 Vict. c. 125, s. 11, *ib.*
    - by executors, *ib.*
    - by Court, *ib.*
  - not to be accelerated, 116
- to purchase land, authorises building, when, 105
  - not repairs, *ib.*
    - of house, *ib.*
    - of cottages, *ib.*
- of sale [*see* SALES BY TRUSTEES]
  - trustees retain legal fee taken for, 6
  - effect of disclaimer on, 12
    - where all disclaim, *ib.*
  - subject to prior life estate, legal fee postponed on, 8
  - or leasing; effect of, on duty to convert wasting securities, 92, 93
  - petition for advice as to exercise of, 109
  - construed strictly as to consents, 118 [*see* CONSENT]
  - exercise of by new trustee before conveyance to him, 214
  - and exchange implies no power to give receipt, 125
    - authorises partition, 123
  - does not authorise lease, *ib.*
    - by executors, 124
  - not given by trust to raise money by mortgage, *ib.*
  - mortgage without, to trustees, 143
  - in mortgage under power, 123
  - under 23 & 24 Vict. c. 125, s. 11, *ib.*
    - by executors, *ib.*
    - by Court, *ib.*
  - mortgagee having, cannot buy under it, 186
  - annuitant having, cannot buy estate charged, *ib.*
  - over property purchased under trust, 146
  - exists while there is a settled estate, 116
  - indefinite, not a perpetuity, *ib.*
  - kept alive by sub-settlement, 117
    - not by jointure, *ib.*
    - by general power of appointment, *ib.*
  - of appointment, keeps power of sale alive, *ib.*
- portions, of appointment of [*see* PORTIONS]
- to give receipts [*see* RECEIPT OF TRUSTEE]
  - for rent, 3
- separate estate may be bound though *feme* have life estate and a, 260
  - where power by will only, *ib.*
  - gift over in default of appointment, 261
- will of *feme covert* under, 259



PRECATORY TRUSTS—*continued*.

- III. certainty of objects and property subject to, 56, 57
  - "relations," "descendants," "family," "heirs," 56
  - donee cannot take beneficially if trust intended, *ib.*
    - resulting trust in such case, *ib.*
  - direction to dispose, how construed, 57
    - when interest of children declared under, *ib.*
    - carried into effect by the Court, when, *ib.*
    - limitation of shares of daughters to separate use, under, *ib.*
  - for children at donee's death, what interests given, *ib.*
  - children and donee taking as a class, *ib.*

PREFERENCE RAILWAY STOCK [*see* INVESTMENT]PREFERMENT [*see* ADVANCEMENT]PREMIUM [*see* POLICY]

- payment of, on policy of life of another not against Thellusson Act, 154
- obtained by partner for taking lease, 77

## PRESSURE,

- confirmation under, of purchase of trust estate by trustee, 194
- by trustee vitiates contract with *c. q. t.* for remuneration, 201
- effect of, on sale by mortgagor to mortgagee, 186

## PRESUMPTION,

- of acceptance of trust, 12
- of payment, by delay, 316
- of release or waiver of right, 317, 319
- of assent, 317
- that trustee is acting in exercise of trust, 305
- of death [*see* DEATH]

PRICE [*see* SALES BY TRUSTEES]PRINCIPAL [*see* AGENT]PRIORITY [*see* NOTICE]

## PRIVATE ACT,

- trustees must have leave of Court to obtain, 103

## PRIVITY

- between parties necessary to give jurisdiction as to foreign property, 245

## PRIZE

- taken in war, trust of, 242

**PRODUCTION**

- of deeds, equitable right to, 145
- covenant for, costs of, *ib.*
- of voluntary deed by executor of settlor, 35  
[*see* TITLE-DEEDS]

**PROFESSION,**

- advancement for preparation for, 178

**PROFIT,**

- trustee must account for, made in trade, how, 286, 287
- inquiry as to, *ib.*
- right of *c. q. t.* to, *ib.*
- agent is trustee of undue, 187

**PROMISE,**

- voluntary, to assign, cannot be enforced, 30, 33

**PROMISSORY NOTE** [*see* INVESTMENT]

- of married woman [*see* SEPARATE ESTATE]
- as collateral security to perform voluntary trust, 34
- voluntary trust of, for wife, 32
- compulsory payment into Court where trust fund lent on,  
275

**PROOF**

- of debts, all trustees must act in, 15
  - except in special cases, 16
- c. q. t.* must join in, in bankruptcy, when, *ib.*
- trustees for creditors may require, by creditors, 40
- against estate of bankrupt trustee [*see* BANKRUPTCY]

**PROSECUTION**

- of trustee for misappropriation, 281, 282

**PROTECTION ORDER**

- under Divorce Act, payment out after, 268

**PROTECTOR**

- of settlement, appointment of, 49
- consent to sale by, after barring entail, 119
- trustee for separate use is, when, 223
- married woman, where, 258

**PUBLIC POLICY,**

- trusts against, are illegal and void, 83

**PUBLIC STOCKS** [*see* INVESTMENT]



## PUR AUTRE VIE

- legal estate, not cut down to chattel interest, 8
- trustees take, where gift over legal, *ib.*
- estate, when taken by trustees, 7

## PURCHASE,

- power to, land, authorises building, when, 105
- [*see* INVESTMENT]
- in son's name [*see* RESULTING TRUSTS], 61—66
- joint [*see* RESULTING TRUSTS], 69—71
- in name of stranger [*see* RESULTING TRUSTS], 66—69
- words of, "heirs of the body" construed as, in executory trusts, when, 44

PURCHASE OF TRUST ESTATE BY TRUSTEES [*see* MORTGAGEE ; AGENT ;

RECEIVER ; PARTNER ; TENANT FOR LIFE ; SOLICITOR ; COUNSEL]

rule as to, 182

by auction, *ib.*

bidding through agent, *ib.*

by contract, through agent, *ib.*

as agent for another purchaser, *ib.*

from co-trustee, 183

by collusion with other purchasers, *ib.*

the trustees being discharged, *ib.*

removed, 215

conveyance in name of children of trustee, 183

of trustee for trustee, *ib.*

repurchase after *bona fide* sale to stranger, *ib.*

by trustee for creditors, *ib.*

by disclaiming trustees, *ib.*

by trustee to preserve contingent remainders, *ib.*

by bare trustee, 184

trustee for creditors, 188

assent of creditors to, *ib.*

jurisdiction of Chancery Division, *ib.*

reversion, 184

rule as to, does not prevent other dealings with *c. q. t.*, *ib.*

after trust ended, *bona fides* must still be proved, *ib.*

onus of proof, *ib.*

severance of fiduciary relation, *ib.*

married woman, acknowledgment by, *ib.*

infant, sanction of Court on purchase from, *ib.*

after auction, *ib.*

liberty to bid, *ib.*

opening biddings, 185

executors and administrators within rule as to, *ib.*

buying legacy from legatee, *ib.*

remedy as to, 191—193

PURCHASE OF TRUST ESTATE BY TRUSTEES—*continued*.

- after resale by trustee, 191
  - sale set aside and reconveyance, *ib.*
  - mesne profits, *ib.*
  - interest on rents, *ib.*
  - repayment of price by *c. q. t.*, *ib.*
    - of money spent on repairs, *ib.*
    - improvements, 192
  - compensation for injury, *ib.*
- resale at option of *c. q. t.*, *ib.*
  - mode of, *ib.*
    - in lots, *ib.*
  - interest of lessees on, *ib.*
  - where price in Court, *ib.*
- to purchaser with notice, *ib.*
  - discovery as to breach of trust, *ib.*
- to purchaser without notice, *ib.*
  - return by trustee of profit with interest, *ib.*
- replacement of property, *ib.*
- costs, *ib.*
- delay and acquiescence, *ib.*
- receiver, *ib.*
- confirmation of, 193—195
  - by act of parties, 193
  - by *c. q. t.*, *sui juris*, and knowing rights, 193, 194
  - must be express, 194
    - not under pressure, *ib.*
  - by lapse of time, 194—195
    - within what period, 194
    - infancy, 195
    - ignorance, *ib.*
    - poverty, *ib.*
    - where creditors sue, *ib.*

PURCHASE MONEY [*see SALES BY TRUSTEES*]

- trustees should themselves receive, 18
- solicitor cannot give receipt for, *ib.*
- without written authority by trustees, *ib.*

PURCHASER [*see PURCHASE ; INVESTMENT*]

- injunction against where trustees sell under depreciatory conditions, 279
- vendor is constructive trustee for, after contract, 72
- conveyance by trustees at suit of, 224
- discharge of, by trustee's receipt, 124—130
  - [*see RECEIPT OF TRUSTEE*]
- for value, postnuptial settlement not made in accordance with articles is void against, 45

PURCHASER—*continued*.

- without notice, limitations in articles not varied against, 46
- secus* with notice when, *ib.*
  - that vendor was trustee, *ib.*
  - of separate estate, 259
- with or without notice [*see* FOLLOWING TRUST ESTATE]
- with notice that vendor was trustee, 192
- right of, to interrogate as to trusts, 193
- of constructive trust on renewal by trustees, 77
- power of one trustee having deeds to make title to, 240
- from trustees not to be favoured at expense of *cs. q. t.*, 111
- fraudulent settlement against purchaser under 27 Eliz. c. 4. 35 [*see* FRAUD]

RAILWAY

- debentures, [*see* DEBENTURES]
- stock [*see* INVESTMENT]

REAL ESTATE, [*see* INVESTMENT]

- separate, under Married Women's Property Act, 250
- abroad, jurisdiction as to, 244
- doctrine of notice inapplicable to, 291

REAL SECURITY [*see* INVESTMENT]

REBUILDING [*see* BUILDING ; REPAIRS]

- power to repair gives none for, 107
- outlay on, petition for advice as to, 109

RECEIPT,

- of trustee for purchase-money, 124—130
  - indorsement on, conveyance of, 125, 190
  - under Lord St. Leonards' Act, s. 23, 124
    - not retrospective, 126
  - Lord Cranworth's Act, s. 29, 124
- discharge by, (1) where express power to give receipt, 125
  - unless contrary intention, *ib.*
  - where power to invest "on security" *ib.*
    - to vary, *ib.*
    - "on securities," *ib.*
    - to sell or exchange, *ib.*
    - to raise money by mortgage or sale, *ib.*

RECEIPT—*continued.*

- (2) where clear trust for sale and  
c. q. t. under disability, 125  
or unascertained, *ib.*
- (3) where discretion as to investment  
of sale-moneys, *ib.*
- (4) where trust to pay debts, legacies,  
or annuities charged on the land,  
126
  - where no debts, or all  
paid, *ib.*
  - one debt mentioned and  
general charge, *ib.*
  - inquiry as to debts un-  
answered, *ib.*
  - general charge same as  
trust to pay debts, *ib.*
  - inquiry as to quantum  
sold to pay debts, *ib.*
  - as to deficiency of per-  
sonalty, 127
  - where particular debts charged, *ib.*
  - debts satisfied, inquiry as to  
legacies unnecessary where,  
*ib.*
- under ss. 14—18 of Lord St. Leonards' Act, 127
  - trustees may sell or mortgage to pay  
debts charged without express power, *ib.*
  - executor may sell or mortgage if no  
devise to trustees, *ib.*
  - purchasers or mortgagees discharged, *ib.*
  - beneficial devises subject to debts, with  
powers of sale or mortgage excepted, *ib.*
- before the Act,
  1. charge of debts, and no power of sale—trustees or  
executors may sell, whether, 127
  2. charge on beneficial devise, devisee may sell, *ib.*
  3. devise without direction to pay, executors may sell, *ib.*
  4. charge without devise, executors and heir may sell, *ib.*
  5. charge of debts and devisee dying in testator's life,  
only Court can sell, 129
- notice to purchaser of improper sale invalidates, *ib.*
  - where debts charged must have been  
long paid, *ib.*
  - where sale after action brought, *ib.*
  - of registered judgment where vendor  
is executor, *ib.*
  - where object of sale not stated, 130

RECEIPT—*continued*.

- creditors must show purchaser had notice, 130
- all the trustees must join in, for trust funds, 15
  - sale moneys, *ib.*
- solicitor liable for taking, from one trustee, 19
- one trustee can give for dividends, 15
  - rents, 15
- for conformity, liability after, [*see* CO-TRUSTEE]
- under 22 & 23 Vict. c. 35, s. 23, or 23 & 24 Vict. c. 145, ss. 29 & 34, 91
- for personal and real debts, distinction as to, *ib.*
- liability for, given for money unreceived, 89
- of trust fund, anticipation of time for, 89
- trustees paying to other trustees entitled only to, 237
- from legatee abroad, petition for advice as to, 109
- separate payment out to *feme coverte* on, 268
- of *feme coverte* to be good, imports separate use, 253, 256
  - solicitor cannot give, for trust fund, 18

## RECEIVER,

- trust property in danger of being wasted, 256
- interlocutory application for, *ib.*
- ex parte* application for, *ib.*
- insolvency of trustee feared, where, *ib.*
- bankruptcy of trustee, on, *ib.*
  - after administration decree, *ib.*
  - trustee in bankruptcy not a party, where, *ib.*
  - appointment of trustee by testator, notwithstanding, *ib.*
- loss of part of fund, ground for, *ib.*
- neglect to get in trust estate, ground for, *ib.*
- disagreement between trustees, ground for, *ib.*
- refusal by some trustees to act, ground for, 273
- disclaimer no ground for, *ib.*
- inaction no ground for, *ib.*
- absence abroad, where ground for, *ib.*
- to pay expenses of renewal omitted by tenant for life, 150, 274
- not appointed because trust estate bought by trustee, 193
- poverty of trustee no ground for, 273
- drunkenness ground for, *ib.*
- and manager, where appointed, *ib.*
- inconsistent interest of trustees, where, *ib.*
- recognisances by, *ib.*
- security given by, *ib.*
- salary, 202
- expenses, of, 274
- discharge of, *ib.*
- interest charged against, when, 285

RECEIVER—*continued.*

- cannot buy annuity charged on estate, 188
- jointure, *ib.*
- under deed, when express trustee, 309

## RECITAL,

- notice from, 298
- acceptance of trust as explained in, 14
- 20 years old when binding, 145
- incorrect, refusal by trustees to execute deed containing, 224
- false, of payment by settlor, makes him trustee, where, 241

## RECOGNISANCES

- of receiver, 274

## RECOMMENDATION,

- words of, create trust, when, 52

## RECONVERSION

- after conversion in equity, 308

## RECONVEYANCE

- of trust estate bought by trustee, 191

## RECOVERY

- of land subject to express trust [*see* STATUTE OF LIMITATIONS]

## RECORD,

- matter of, disclaimer by, doctrine as to, 10

REDUCED ANNUITIES [*see* INVESTMENT]

## RECTIFICATION

- of settlement made under articles, 45
  - on ground of mistake, *ib.*
- of voluntary settlement, 31
- of power to appoint new trustees, 204

REFERENCE, [*see* INQUIRY]

- appointment of new trustees without, 205
- as to payment of trustee who refuses to act gratuitously, 200
- as to remuneration of solicitor-trustee, 198
  - surviving partner, *ib.*
- as to costs of solicitor-trustee, 200

## REFUNDING

- wrong payments to *c. q. t.* [*see* CESTUI QUE TRUST]
- legacies, 329

## REFUSAL,

- receiver on, of trustees to act, 273
- of payment by trustees to *c. q. t.* [*see* CESTUI QUE TRUST]

REFUSAL—*continued*.

- without release, 236
- to furnish accounts, by trustee, 228
- of trustee to sue, form of pleading, on, 279

## REGISTRATION,

- neglect of, by trustees, 89

## RE-INVESTMENT

- in land [*see* INVESTMENT]
- payment into Court pending, after sale, not ordered, 276

## RELATIONS,

- meaning of, 56

## RELATIVE

- may be trustee, where, 211

## RELEASE,

- trustees not entitled to, 236
- under seal, when, *ib.*
- set aside, when obtained by fraud, *ib.*
- refusal of, by *c. q. t.*, action for administration, where, *ib.*
- express trust, on payment under, *ib.*
- parol trust on payment under, *ib.*
- where trustee is asked to infringe trust, *ib.*
- ignorance of *c. q. t.* avoids, 237
- extends only to matters expressly included, *ib.*
- on payment to other trustees, *ib.*
- by *c. q. t.* of settled shares, *ib.*
- payment into Court is, *ib.*
- form of, *ib.*
- by *c. q. t.* for less sum on ground of supposed want of title, 232
- of breach of trust [*see* BREACH OF TRUST]
- presumption of [*see* PRESUMPTION]
- disclaimer by, 10
- by trustees, of rights, 89
- of rents due, to get rid of tenant, 101

## RELIGION,

- trusts offending against, void, 83

REMAINDERMAN [*see* INHERITANCE]

- rights of, to income of residue [*see* TENANT FOR LIFE], 95—97
- cannot claim as under express trust when tenant for life renews, 75
- voluntary settlement for, when good, 32

## REMOVAL

- of trustee, where purchaser or lessee of trust estate, 215
  - no jurisdiction under s. 32 of Trustee Act, *ib.*
    - or to consider validity of trust deed, *ib.*
- on disagreement with *c. q. t.*, 216
  - refusal of co-trustees to act with him, *ib.*
  - bankruptcy, 209
  - corrupt practices, 216
  - forgery, *ib.*
  - destroying trust property, *ib.*
  - refusal to exercise discretion, *ib.*
    - to upset trust, *ib.*
    - to be sought in reasonable time, *ib.*
  - scandal in alleging facts for, 216, 217
  - impertinence, *ib.*
- of executor, as trustee under continuing trusts, 206

REMOTENESS [*see* PERPETUITIES, RULE AGAINST]

- executory trusts bad for, modified, 49
- restraint on anticipation void for, when, 267
  - after prior life estate, *ib.*
  - on appointment under ante-nuptial settlement, *ib.*
    - of portions under will, *ib.*

## REMUNERATION

- of trustees, &c. [*see* ALLOWANCES]

## RENEWAL OF LEASES, 148—151

- trustees to procure, under Lord Cranworth's Act, 148
  - except where tenant for life not obliged to renew, *ib.*
  - discretion of tenant for life to renew, where, *ib.*
  - leasehold for lives, tenant for life being a *c. q. vie*, *ib.*
    - charge by tenant for life on estate for expenses, *ib.*
  - where intention appears that tenant for life should renew, *ib.*
  - where legal tenant for life directed to pay fines, 149
  - where legal estate in trustees and no direction to renew, *ib.*
  - effect of Act, *ib.*
- implied trust for, *ib.*
- trust for, inserted in settlement under executory trust, 149
  - before the Act, *ib.*
    - in tenant for life makes him a trustee, 149, 150, 309
  - receiver for payment of expenses of, 149, 150, 273
  - by trustees in their own name [*see* CONSTRUCTIVE TRUSTS]



RENEWAL OF LEASES—*continued.*

- apportionment of fines on, 150, 151
- where no direction, according to enjoyment, 150
  - how calculated, *ib.*
  - where life tenant renews, *ib.*
  - security from life tenant, *ib.*
- for lives or for years, no distinction as to, *ib.*
- mode of, 157
  - with life insurance, *ib.*
- by sale or mortgage, mode of, 151
- by payment out of rents, *ib.*
  - retaining rents as sinking fund, *ib.*
  - annual rents, *ib.*
  - out of rents or by mortgage, *ib.*
- expenses of, not payable by persons having charges on
  - old lease, 77
  - lien for, 78

## RENTS,

- legal estate does not pass on trusts to permit another to
  - receive, 2
  - unless *feme covert*, 3
- legal estate passes to trustees to pay, or give receipts for, *ib.*
  - apply for maintenance, *ib.*
- receipt of, by father purchasing in son's name no rebuttal of
  - advancement, where, 62
- of residuary realty, right of tenant for life to, 96
- receivable by one trustee, 15
- received by one trustee, co-trustees liable for, *ib.*
- arrears of, release of, by trustees, 101
  - advancement to pay, 179
- of leaseholds, trust to apply, during minority or life, 2
- portions, raising, out of [*see* PORTIONS]
- raising money to pay debts out of, 155
- renewal of leaseholds out of, 151
  - by sinking fund, *ib.*
  - out of *annual*, *ib.*
- applicable to repairs, not for rebuilding, 107
- liability of vendor for, after contract for sale, 73
- accumulation of, limit of, under Thellusson Act, 153
- account of [*see* STATUTE OF LIMITATIONS]
- charge for collecting [*see* ALLOWANCES]
- commission on, to mortgagee, 201
- mortgagee cannot charge for receiving, 197
  - may employ bailiff to receive, *ib.*

## REPAIRS,

- expenditure in, 106

REPAIRS—*continued*.

- power to make, gives none for rebuilding, 107
- trustees to make, take legal fee, 6
- lien for, of joint purchaser, 70
- power to cut timber for, 107
- of trust estate bought by trustee, allowance for, 191

REPLACING STOCK [*see* BREACH OF TRUST]

## REPRESENTATIVE

- of *c. q. t.*, payment to by trustee, 232
- liability of, for breach of trust [*see* BREACH OF TRUST]
- mesne* profits against, 323

REPUTED OWNERSHIP [*see* BANKRUPTCY]

## REQUISITIONS,

- decision of Judge as to, under Vendor and Purchaser Act, 145

## RESALE

- by trustee after purchase of trust estate  
[*see* PURCHASE OF TRUST ESTATE]

## RESERVE,

- fixing, petition for advice as to, 109
- by trustees, 112
- trustees buying in without, *ib.*
- sale at, after abortive sale, *ib.*
- to co-trustee, *ib.*
- purchase by trustee of trust estate at, after abortive auction,  
184

## RESIDUE,

- wasting securities to be sold when, given to persons in succession, 191 [*see* GETTING IN TRUST ESTATE].

RESTRAINT FROM ANTICIPATION [*see* SEPARATE ESTATE]RESTS [*see* INTEREST]

## RESULTING TRUSTS

- from imperfect disposition, 58—60
  - where trusts exhaust less than whole legal estate, 58
  - land devised in aid of personalty to pay debts, not required, *ib.*
  - fund to answer annuity not itself disposed of, *ib.*
- heir not excluded by negative words, 59
  - nor by bare intention, *ib.*
  - nor by legacy to him, *ib.*
- rebutted by intention of bounty to relatives, when, *ib.*
- effect of using words like "trust" or "trustee" *ib.*

RESULTING TRUSTS—*continued.*

- where trust intended to be but not declared, 60
- evidence of intention that trust should result, *ib.*
- where trusts would be illegal, *ib.*
- where trusts fail, 56, 60
- legal estate does not pass, where, 3
- where trusts inapplicable to land, 56, 60
- unnecessary conversion, *ib.*
- from want of consideration, 60, 61
- grant, lease, or gift without consideration, results to
  - grantor or lessor, *ib.*
  - secus* to wife or child, *ib.*
- nominal consideration does not rebut, 61
- saved by Statute of Frauds, s. 8, *ib.*
- parol evidence to rebut, when allowed, *ib.*
- on purchase in name of wife or child, exclusion of, 61
- advancement by parent or one *in loco parentis*, 61, 65
  - who are *in loco parentis*, 65
  - attaches to property agreed to be bought, 62
  - receipt of rents by father, effect of, *ib.*
  - effect of Statutes of Elizabeth, *ib.*
  - purchase of lifehold copyholds by parent, *ib.*
    - putting in names of self, wife, and son, *ib.*
    - contrary custom bad, *ib.*
  - sons advanced take successivè, *ib.*
  - freeholds, purchase of, in names of father and son, 63
  - previous provision, effect of, *ib.*
  - insurance in name of son, *ib.*
  - intention to retain control, *ib.*
  - purchase to secure vote, *ib.*
    - by husband in wife's name, *ib.*
- investment in joint names of husband and wife, 64
  - adding stranger's name in, *ib.*
  - transfer of banking account into joint names of husband and wife, *ib.*
  - payment to wife's account, *ib.*
  - names of settlement trustees, *ib.*
  - election between will and advancement, *ib.*
  - in case of deceased wife's sister or mistress, no advancement, *ib.*
- investment by widow in joint names of self and child, *ib.*
  - of daughter and her husband, *ib.*
  - by woman living apart from husband, 65
  - where son acts as solicitor for parent, *ib.*
- purchase in name of natural children, *ib.*

RESULTING TRUSTS—*continued.*

- evidence in writing of trust intended, 65
  - must be contemporaneous or antecedent declarations, *ib.*
- revocation of gift by way of advancement, 66
- subsequent will, effect of, *ib.*
- prior will, effect of, *ib.*
- reservation of life interest, *ib.*
- surrender to uses of will, *ib.*
- mortgage or lease, effect of, *ib.*
- on purchases in name of strangers, 66—69
  - may be rebutted by evidence, 67
  - all property subject to rule, *ib.*
  - secus* if object illegal, *ib.*
  - where purchase by several in name of one, *ib.*
  - absence of declaration of trust, *ib.*
  - proof after death, *ib.*
  - consideration falsely stated, *ib.*
  - poverty of grantee, *ib.*
  - evidence as to who paid price, 68
    - of payor's intention, *ib.*
    - of parol express trust of purchase-money, *ib.*
    - against nominee's denial, *ib.*
  - rebuttal as to part, *ib.*
  - where purchase made with borrowed money, *ib.*
  - agent paying price and taking conveyance to himself, *ib.*
  - without taking conveyance, *ib.*
  - delay in enforcing, *ib.*
- on joint purchases, 69—71
  - where money advanced in equal or unequal shares, 69, 70
  - inequality how to be shown, 69
  - action for contribution, *ib.*
- on joint mortgage, *ib.*
  - purchase of equity of redemption, *ib.*
- lien of joint purchaser for repairs, &c., 70
- upon purchaser for partnership purposes, *ib.*, 71

## RETAINER,

- administrator of defaulting trustee bound to exercise right of, 329
- no right of, in trustee of irrevocable creditor's deed, 38
  - secus*, if revocable, 41
- married woman can give, to solicitor in reference to separate estate, 262

## RETIREMENT

of trustees [*see* NEW TRUSTEES]

## REVERSION,

voluntary trust of equitable, 28

to be got in for benefit of tenant for life, 95

where it falls in before conversion, *ib.*

expectant on life-tenant's death, *ib.*

rights of tenant for life in sale of, 115, 116

trustee buying, from *c. q. t.*, 184

interest in, assignment of [*see* ASSIGNMENT ; NOTICE]

alienation of, to separate use, 258

without acknowledgment, *ib.*

life estate and, may be sold together, 117

and leaseholds may be sold together, *ib.*

maintenance out of, secured by policy, 176

bar where interest in [*see* STATUTE OF LIMITATIONS]

## REVOCABLE TRUSTS

for creditors [*see* CREDITORS]

## REVOCATION

of voluntary deed by destroying seals, 35

of gift by way of advancement, 66

## RIGHT

of entry [*see* ENTRY]

## ROBBERY,

liability of trustees for, 98

of executors, *ib.*

## RULE AGAINST PERPETUITIES [PERPETUITIES, RULE AGAINST]

SAFE CUSTODY [*see* CUSTODY]

## SAFETY

of trust property, liability of trustees for, 98—100

SALE [*see* SALE BY TRUSTEES]

by purchaser without notice to one with, good, 296

with notice to one without, when good, *ib.*

though agent with notice, *ib.*

who has not paid price, *ib.*

by married woman restrained from anticipation, 267

express trust for, under Statute of Limitations [*see* STATUTE OF LIMITATIONS]

conduct of, solicitor having, cannot buy, 191

SALE AND EXCHANGE [*see* POWER]

power of, is "usual power" in settlement, 50

## SALE BY TRUSTEES, 111—130

trust for, or power of, when to be exercised, 111

best price to be obtained on, *ib.*

to be conducted impartially, *ib.*

valuation before, *ib.*

costs of, *ib.*

at undervalue, 112

by auction or privately, 111

description of trustees in particulars on, 112

in lots, *ib.*

discretion as to portions of estate to be included in, *ib.*

advertisement of, *ib.*

on suitable day, *ib.*

reserve price on, *ib.*

no buying in without fixing, *ib.*

selling at, after unsuccessful, *ib.*

to co-trustee, *ib.*

opening biddings after, *ib.*

offers, choice between several, on, *ib.*

pressure by *c. q. t.* as to, on, *ib.*

tenant for life not to be favoured on, *ib.*

being trustee may exercise power of sale, 113

conducting, *ib.*

to raise portions, effect of, on vesting, 160 [*see* PORTIONS]

to pay debts, 101, 113

where forbidden, 155

after action, not without leave of Court, 113

when called on by *c. q. t.*, *ib.*

specific performance where, is breach of trust, 113, 118

injunction to restrain improper, 113, 279, 280

co-trustee must concur in, 114

*feme covert* cannot, *ib.*

"with all convenient speed," *ib.*

after year from death of testator, *ib.*

neglect by not selling, liability for, *ib.*

refusal to sell at instance of *c. q. t.*, *ib.*

where all *cs. q. t.* do not wish sale, *ib.*

delay in, of shares, liability for, 115

passive trustee, liable for, *ib.*

infant trustee, liability of, *ib.*

costs, where delay not perverse, *ib.*

postponement of, not to affect rights, *ib.*

adjustment of rights on, *ib.*

reversion, sale of, on, *ib.*

right of legatees to interest on, *ib.*, 116

SALE BY TRUSTEES—*continued.*

- for fixed period, sale after, 116
  - not to affect rights, *ib.*
- acceleration of, not to affect rights, *ib.*
- indefinite power of, duration of, *ib.*
  - not a perpetuity, *ib.*
- power of, kept alive by sub-settlement, 117
  - ceases though jointure charged, *ib.*
    - not where general power to appoint, *ib.*
- under different trusts, where good, *ib.*
- joint, with other trustees or owners, where good, *ib.*
  - of undivided shares, *ib.*
  - apportionment of price on, *ib.*
    - by Court, *ib.*
    - not before sale, *ib.*
  - onus to prove benefit of, 118
- of securities [*see* SECURITIES]
- of goodwill, 90
- of heirlooms, private Act for, 103
- of land without timber, 118
- of timber without land, to pay debts, 118, 124
- timber-money, wrong payment of, to tenant for life, on, 118
  - right to, 107
- of surface with reservation of mines, 118
  - 25 & 26 Vict. c. 108, petition under, for, *ib.*
  - under Settled Estates Act, 1877, s. 19, *ib.*
- power of, construed strictly, *ib.*
- consent of all *cs. q. t.* to, *ib.*
  - parol, *ib.*
  - antecedent, *ib.*
  - under Settled Estates Act, 119
  - after alienation, *ib.*
    - bankruptcy, *ib.*
    - sale by bankruptcy trustee, *ib.*
    - of protector after barring estate tail, *ib.*
    - where trustees to divide lands among *cs. q. t.*, *ib.*
    - trustees in partition action representing *cs. q. t.*, *ib.*
- price to be received by trustees or agent appointed by writing, *ib.*
  - not to be annuity or rent-charge, *ib.*
    - except under Settled Estates Act, s. 18, 120
  - to be paid before possession given, *ib.*
  - not to be left in part on mortgage, 120, 139
  - reinvestment of, 132 [*see* PURCHASE-MONEY]
- lease with option to buy not good instead of sale, *ib.*
- charge for building and preparing land for, *ib.*
- good marketable title to be given on, *ib.*
- allowance on, for settling prior claims, *ib.*

SALE BY TRUSTEES—*continued*.

- indemnity for, 132
- for raising money advanced out of pocket, 102
- conditions of sale on, not to be depreciatory, 132
  - what are depreciatory, *ib.*
- counsel, employment of, to draw, *ib.*
- misdescription, 121
  - compensation for, *ib.*
- succession duty removed to land purchased for reinvestment, *ib.*
- without excluding rules in Vendor and Purchaser Act, 1874, *ib.*
- covenant against incumbrances by trustees, *ib.*
  - for title by *c. q. t.*, *ib.*
- concurrence in, by *c. q. t.*, where, *ib.*
  - on sales by Court, *ib.*
- of leaseholds, covenants by purchaser on, *ib.*
  - indemnity as to, *ib.*
  - to provide for renewal of, 151
- production of deeds, covenant for, by trustees, 121
- conveyance on enfranchisement of copyholds, 122
  - of outstanding legal estate, *ib.*
- costs of, charge of, 201
  - of specific performance action, 122
- trust for, exercise of, by surviving trustee, *ib.*
  - not executed by mortgage, where, *ib.* [*see* MORTGAGE]
  - does not authorise partition, *ib.*
  - and exchange authorises partition, 123
  - does not authorise lease, *ib.*
  - with direction to discharge mortgage, *ib.*
  - advice petition as to, 109
  - mortgage does not authorize, 123
- receipt of trustees, on [*see* RECEIPT]
- of trust estate to trustee [*see* PURCHASE OF TRUST ESTATE]
- by new trustee before conveyance to him, 214

## SALE MONIES,

- all trustees must join in receipt of, 15
- doctrine of notice applies to assignment of, 291
- dower out of, 270

## SATISFACTION

- of portion [*see* PORTIONS]
- of maintenance on portion by subsequent will, 167
- will is not, for gift by voluntary deed, 35

## SAVINGS

- of separate estate [*see* SEPARATE ESTATE]



## SCOTLAND,

- law of, payment by trustee to wrong persons from ignorance of, 230
- mortgage of land in, whether breach of trust, 143
- provisions of Thellusson Act extended to, 153

## SEAL,

- release under [*see* RELEASE]
- destruction of no revocation of deed, where, 35

## SECRET PREFERENCE,

- under trusts for creditors, 40

## SECRET TRUSTS, 79—82

- where they arise, 79
- founded on personal fraud, *ib.*
- nature of the fraud, *ib.*
- right of discovery as to, *ib.*
- enforced notwithstanding Statute of Frauds, *ib.*  
Wills Act, *ib.*
- parol evidence to support, 80
- silence or conduct of donee, effect of, as acceptance of, *ib.*
- must be communicated by testator, *ib.*
- wish or expectation not enough to create, *ib.*
- discretion in donee does not defeat, *ib.*
- uncertainty of property bound, effect of, *ib.*  
inquiry where, 81
- ignorance of one of several donees, effect of, *ib.*  
where gift is joint or in common, *ib.*
- affects only property devised, *ib.*
- married woman trustee under, husband's right subject to, *ib.*
- for charity, 81, 82
  - discovery as to, 81
  - fraud must be shown, what, 82
  - reserving life interest, *ib.*
  - devise in case of death within year under Mortmain Act, *ib.*
  - title of trustee under, *ib.*

## SECURED CREDITOR,

- valuation of security of, 40

## SECURITIES,

- not sanctioned by Court, to be sold, when, 91
- wasting [*see* GETTING IN TRUST ESTATE], 91—97
- discretion as to time of sale of, 89
- sale of, within a year, *ib.*
  - where liability on shares, *ib.*

SECURITIES—*continued*.

- custody of, by trustees, 240
  - by co-trustee, *ib.*
- transferable by delivery, safety of, 100
- for money, mortgage estate passes under, 22
  - lands contracted to be sold do not pass under, *ib.*

## SECURITY,

- personal [*see* PERSONAL SECURITY]
- "sufficient," bond is not, 88
- insufficient [*see* INVESTMENT]
- real [*see* INVESTMENT]
- title-deeds, delivery of, to *c. q. t.*, on, 226
- solicitor taking, for costs, 190
- from agents, trustees need not take, 20
- receiver, given by, 274
- interest where, given to answer breach of trust, 284

## SEPARATE ESTATE,

- mode of creating, 247
- legal estate outstanding, protection of, to, *ib.*
- husband trustee of, when, *ib.*
  - not when separate property sold during  
discovery, *ib.*
  - disclaimer of, may create, 248
  - gift to, for livelihood of wife, when it is, *ib.*
  - ante-nuptial contract by, as to, *ib.*
  - gifts by, to wife, where, 32, 248
  - paraphernalia, *ib.*
  - expenditure by, on property which is, *ib.*
  - payment of incumbrances by, on property, which is,  
lien for, *ib.*
  - gift to, destruction of, by, *ib.*
    - assent of wife to, *ib.*
    - evidence of, *ib.*
    - cheque, 249
  - loan to, proof by wife, for, *ib.*
  - purchase of land out of, and devise by, *ib.*
  - acquiescence of wife in dealings by, *ib.*
  - curtesy of, in, 271
- Married Women's Property Act, 1870, under, 249
  - wages, earnings, legacies, share as next of kin and realty,  
250
  - applies to legacy when paid, *ib.*
  - debts of married women before marriage, under, 250, 263
  - separate trade under, *ib.*
  - earnings under, are equitable assets on death of *feme*, 251
  - restriction of, to particular marriage, 250
  - recurrence of, on succeeding covertures, *ib.*

SEPARATE ESTATE—*continued*.

- suspension of, during discoverture, 250
- conveyance of, by trustee, during discoverture, 251
- surrender of, by infant *feme covert*, *ib.*
- death of married woman, cesser of, on, *ib.*
  - title of husband as administrator, on, *ib.*
  - trusts over on, effect of, on arrear of, *ib.*
  - creditors, rights of, on, *ib.*
  - earnings are equitable assets, on, *ib.*
  - funeral expenses, 252
- power of appointment of, disposal of capital under, *ib.*
  - money in house passes under, *ib.*
- corpus, where trust of, extends to, *ib.*
- savings of, are separate estate, *ib.*
  - land bought with, is, *ib.*
  - money in a bank, whether, *ib.*
    - given by husband, when, 253
    - when living apart, *ib.*
- accretions of, are separate estate, 252
- accrued shares, when also, 257
- arrears of, when, 253
- words constituting, *ib.*
  - no particular form of, necessary, *ib.*
  - exclusion of marital right to be shown by, *ib.*
  - "sole" does not *per se* create, *ib.*
    - in antenuptial settlement, 254
    - in a will, *ib.*
  - "sole use independently of husband," 255
    - "of future husband," *ib.*
    - of any other person, *ib.*
- sole receipt of rents, *ib.*
- separate receipt, 256
- "free from control of husband," 255
- "sole control," *ib.*
- "only," *ib.*
- "absolutely," *ib.*
- "at the disposal," 256
- "proper hands," payment into, *ib.*
- "paid," "delivered," *ib.*
- "enjoy," *ib.*
- "maintenance and support," *ib.*
  - discretion as to, *ib.*
- where several gifts by different words, *ib.*
- gift of, to separate use of such daughters "as are married," 257
  - under precatory trust, 57

SEPARATE ESTATE—*continued.*

- under executory trust, 47, 48
- power of disposition of*, 257—259
  - as if married woman were *feme sole*, 257
  - principle as to, *ib.*
  - equitable fee, alienation of, 258
    - estate tail, bar of, *ib.*
  - consent of trustees unnecessary to, *ib.*
  - protector, where *feme covert*, concurrence of husband unnecessary, *ib.*
  - acknowledgment under Fines and Recoveries Act, not required, *ib.*
    - under Malins's Act, *ib.*
  - reversion is subject to, *ib.*
  - contingent alienation by *feme covert*, 259
  - will of *feme covert*, *ib.*
    - under power, *ib.*
- purchasers without notice of, rights of, *ib.*
- general engagements*, liability of, for, 259—263
  - when made on faith of, 259
  - living apart, where, 260
  - where only payable out of, *ib.*
    - though *feme* ignorant of rights, *ib.*
  - where *feme* has only life estate and a power, *ib.*
    - where power by will only, *ib.*
    - where gift over in default of appointment, 261
  - jewels, *ib.*
- bond, *ib.*
  - husband joining in, *ib.*
  - wife joining in, as surety, *ib.*
- covenant, *ib.*
- bill of exchange, *ib.*
- promissory note, 262, 264
- lease, agreement for, 262
- sale, contract for, *ib.*
- indemnity for calls on shares, to trustees, *ib.*
- guarantee, *ib.*
- retainer of solicitor and others, *ib.*
  - costs, liability for, *ib.*
- debt of husband, when not liable for, *ib.*
  - charge of, on, 263
- household expenses, *ib.*
- support of pauper husband, *ib.*
  - children, *ib.*
- after death of husband, *ib.*
- proceedings with regard to*, 263—266
  - no personal action against *feme covert*, 263
  - action against *feme covert* and trustees, *ib.*

SEPARATE ESTATE—*continued.*

- husband who has received, 264
- injunction to restrain husband receiving, *ib.*
- form of decree charging (*Picard v. Hine*), *ib.*
  - where wife surety only, *ib.*
- husband to be co-defendant, when, *ib.*
  - co-plaintiff, when, *ib.*
- death of *feme covert*, remedy on, *ib.*
- separation, action to establish separate use, after, 265
- nuisance, action by *feme coverte* for, *ib.*
- trespass on, action by husband for, *ib.*
- bankrupt, whether *feme coverte* can be, with respect to, *ib.*
- torts, *feme coverte* not liable for, *ib.*
- breach of trust, *feme coverte* liable for, *ib.*
  - if unrestrained from anticipation, *ib.*
  - secus*, if restrained, *ib.*
  - arrears of, liable for, on, 266
  - future income, not applicable to repair, *ib.*
- fraud, liability of, for, *ib.*
- restraint on anticipation*, 266—268
  - all property may be liable to, 266
  - annexed to separate use, *ib.*
  - suspension of, during discovery, *ib.*
  - words creating, 266, 267
  - on settlement under executory trust, when, 49
  - trust to pay income from time to time is not, 267
  - forbidding sale or mortgage is, *ib.*
  - remoteness, where void for, *ib.*
  - Court cannot relieve against, *ib.*
  - acquiescence not excused by, *ib.*
  - breach of trust, effect of, on liability for, 265, 266
  - fraud, effect of, on liability for, 266
  - compromise, effect of, on, 268
  - cash in Court, payment out of, notwithstanding, *ib.*
  - stock in Court not transferred out, where, *ib.*
  - past dividend in Court paid out, notwithstanding, *ib.*
  - Settled Estates Act, sale moneys under, remain liable to, *ib.*
  - Divorce Act, payment out after protection order under, *ib.*

SEPARATE USE [*see* SEPARATE ESTATE]

## SEPARATION,

- trust for future, void, 83
- should follow on deed, 84
- new trustees of deed for, 204
- action after, to establish separate use, 265

- SEQUESTERATOR,  
entitled to past dividend in Court of separate estate, 268
- SERVANT,  
married woman may hire, with reference to separate estate, 262  
time for discharging, 90
- SERVICE,  
out of jurisdiction [*see* FOREIGN PROPERTY]  
of petition for opinion of Court, 110
- SETTLED ESTATES ACT [*see* STATUTES]  
application of fund in Court under, 106
- SETTLEMENT,  
voluntary [*see* VOLUNTARY TRUSTS]  
cancellation of, 31  
reformation of, *ib.*  
effect of death upon, when unexecuted, 34  
void as against rule against perpetuities, how far, 152  
rectification of [*see* RECTIFICATION]  
strict, prevents trust estates passing by general devise, 21  
funds, trustees should get transfer of, 87  
covenant in, by husband, should be enforced, *ib.*  
of fund advanced under power, 179  
of timber-money wrongly paid to life-tenant, 118
- SETTLOR,  
of equitable estate getting in legal estate, 35  
cannot revoke by destroying seals, *ib.*  
retainer by, of voluntary settlement, 34  
death of, effect of, *ib.*  
acting on power of attorney after, *ib.*
- SET-OFF,  
of beneficial interest of trustee against breach of trust, 220  
by debtor to *c. q. t.* of debt owing by trustee, 294
- SEVERING DEFENCE [*see* DEFENCE]
- SHARES,  
voluntary trust of, 29  
covenant to transfer, 30  
letter declaring voluntary trusts of, without more, where, 31  
where it is appointment under power, *ib.*  
trustee not bound to replace, when bought from *c. q. t.*, 193  
following, belonging to trustee who neglects to buy others, 304  
passing by delivery, custody of, 100

SHARES—*continued.*

- required to be registered in single name, 100
- liability of trustees for calls, on delay in selling, 115 [*see* CALLS]
- calls on, indemnity for, by married woman to trustees, 262
- new, trustees may not accept, 139

SHELLEY'S CASE,

- effect of, upon executory trusts, 43

SIGNATURE,

- what is sufficient, under s. 7 of Statute of Frauds, 26

SIMPLE CONTRACT DEBT [*see* DEBT]

- distinction as to, abolished by 32 & 33 Vict. c. 46, where, 14

SINKING

- of portions [*see* PORTIONS]

SINKING FUND,

- making, to pay debts, by means of term, 155
  - to secure other part of devised property, *ib.*
- for meeting fines for renewal of leases, 153

SOLE USE [*see* SEPARATE ESTATE]

SOLICITOR,

- not trustee for client, 309
- accounts as trustee for acts beyond duty, 303
  - or fraudulently, *ib.*
  - where money entrusted for mortgage, *ib.*
- trustees not to employ mortgagor's, 142
  - liable for fraud of, *ib.*
  - forgery by, *ib.*
- constructive notice by notice to, 290, 297
  - where employed for all parties, 297 [*see* NOTICE]
- to trust, may be trustee, 211
- who is trustee may act for the trust, 197
  - can charge only costs out of pocket, *ib.*
  - though employed by co-trustees, *ib.*
  - partner of, may act, when, 197, 198
  - remuneration to, reference as to, 198
    - without reference, *ib.*
  - may charge costs to another client, *ib.*
    - if settlement so directs, 199
  - after action brought, 200
  - verbal agreement as to costs by, *ib.*
  - extra costs beyond provision, *ib.*
    - reference as to, *ib.*

SOLICITOR—*continued*.

- liability of co-trustees for receipts by, 239
- non-investment by, remedy for, 324
- who is mortgagee cannot charge commission on rents, where, 201
  - can have only costs out of pocket, 197
  - buying equity of redemption, 186
- buying from client, 189
  - accidental advantage in, *ib.*
  - inadequate value, *ib.*
  - where client debtor to, *ib.*
    - mortgage to secure costs, 190
  - where no duty to advise client, *ib.*
  - separate advice, effect of absence of, *ib.*
  - where relation of solicitor and client ceased, *ib.*
  - proof of payment of price by, *ib.*
- sale by, of one client's property to another, *ib.*
- gifts to, *ib.*
- conduct of sale, having, cannot buy, 191
- misapplication by, 19
  - by partner of, 325
- of *c. q. t.* cannot authorise sale of trust estate to trustee, 184
- cannot give receipt for trust money, 18
  - for purchase money, *ib.*
  - unless trustees give written authority, 18, 119
- may receive money in ordinary course, 18
  - but not pay it to his own account, *ib.*
- should not have money before it is required, *ib.*
- liable if he takes receipt of only one trustee, 19
- may charge for collecting rent, when, 202
- to creditors being trustee of deed for them, effect of, 38
- son acting as, for parent in purchase in son's name, 65
- separate estate liable for retaining, 262
- striking, off Rolls, 282

## SON,

- eldest, meaning of [*see* PORTIONS]
- younger, meaning of [*see* PORTIONS]

SOVEREIGN [*see* CROWN]SPECIALTY, [*see* DEBT]

## SPECIFIC PERFORMANCE,

- of sale amounting to breach of trust not decreed, 113
  - on contract of *feme covert* trustee, 114
- of contract for sale by settlor after voluntary settlement, 36
  - against him, *ib.*
- interrogatories by defendant as to trusts in action for, 193
- costs of action for, 122



## STAKEHOLDER,

trustee guilty of breach of trust, accounts as, 327

STALE DEMAND [*see* STATUTE OF LIMITATIONS]

## STAMP,

on deed appointing new trustees, 215  
where two deeds, *ib.*

## STATEMENT OF CLAIM,

disclaiming defendant should not traverse, 11  
interest should be prayed by, where, 284

## STATUTES,

27 Hen. VIII. c. 10 (Statute of Uses), 1, 2  
34 & 35 Hen. VIII. c. 5 (Wills), 259  
13 Eliz. c. 5 (Creditors), 35, 36, 62  
27 Eliz. c. 4 (Purchasers), 35, 62  
22 & 23 Car. II. c. 10 (Distributions), s. 5, 180  
29 Car. II. c. 3 (Frauds) s. 7, 25, 26, 85, 112, 243  
s. 8, 61

[*see* STATUTE OF FRAUDS]

9 Geo. II. c. 36 (Mortmain), 153  
39 & 40 Geo. III. c. 98 (Thellusson Act), 153—156  
41 Geo. III. c. 90 (Attachment), 276  
11 Geo. IV. & 1 W. IV. c. 40 (Executors), 243  
3 & 4 W. IV. c. 27 (Limitations), s. 5, 319  
s. 24, 312  
s. 25, 306  
s. 26, 296, 320  
s. 27, 316  
c. 71 (Fines and Recoveries), s. 24, 258  
1 Vict. c. 26 (Wills), 259  
ss. 30, 31, 4, 5, 6, 7  
1 & 2 Vict. c. 110 (Judgments), 284  
8 & 9 Vict. c. 16 (Companies Clauses), s. 20, 140  
18 (Lands Clauses), s. 69, 105  
106 (Real Property), 295  
10 & 11 Vict. c. 96 (Trustee Relief), 175, 205, 208  
11 & 12 Vict. c. 36 (Accumulations, Ireland), s. 41, 153  
13 & 14 Vict. c. 60 (Trustee Act), s. 2, 209  
ss. 32, 40, 215  
s. 46, 243  
15 & 16 Vict. c. 55 (Trustee Extension), 209  
s. 8, 243  
86 (Declaration of Rights), s. 50, 234  
(Accounts), s. 54, 229

STATUTES—*continued*.

- 19 & 20 Vict. c. 97 (Mercantile Amendment), s. 5, 333
- 20 & 21 Vict. c. 57 (Malins' Act), 258
  - 85 (Divorce), 268
    - ss. 21, 25, 257
- 22 & 23 Vict. c. 35 (St. Leonards), 96, 127
  - (Timber), s. 13, 118
    - ss. 14—18, 127
    - s. 21, 213
  - (Receipts), s. 23, 91, 124, 127
  - (Power of attorney), s. 26, 235
  - (Advice Petitions), s. 30, 108—110
  - (Indemnity), s. 31, 237
  - (Investment), s. 32, 131, 132
  - 71 (Costs of trustee), s. 29, 199
- 23 & 24 Vict. c. 38 (Investment), 96, 132, 133
  - 125 s. 11, 123
  - 145 (Lord Cranworth's), ss. 4, 5, 6, 132
    - ss. 8, 9 (Renewals), 148
    - s. 25, 133
  - (Maintenance), s. 26, 171
  - (Receipts), s. 29, 124
- 24 & 25 Vict. c. 94 (Stamps), 215
  - 96 (Larceny), ss. 75, 80, 86, 281, 282
  - 145 (New Trustees), s. 27, 203, 204
- 25 & 26 Vict. c. 89 (Companies), s. 30, 140
  - 108 (Reservation of Mines), 118
- 27 & 28 Vict. c. 114 (Improvement of Land), ss. 9, 24, 49, 66, 107
- 30 & 31 Vict. c. 132 (East India Stock), 133
- 32 & 33 Vict. c. 46 (Debts), 14, 333
  - 62 (Debtors), s. 4, 276
  - 71 (Bankruptcy), s. 6, 210
    - s. 12, 277
    - s. 15, 208
    - s. 49, 210
    - s. 91, 35
    - s. 117, 209
- 33 Vict. c. 14 (Aliens), 244
- 33 & 34 Vict. c. 23 (Convict's Property), 199, 243
  - 56 (Limited Owner's Residences, 1870), 106
  - 93 (Married Women's Property), 250
  - 97 (Stamps), 215
- 36 & 37 Vict. c. 66 (Judicature), s. 24, sub-s. 3, 331
  - s. 25, sub-s. 2, 306
    - sub-s. 6, 288
    - sub-s. 10, 207
- 37 & 38 Vict. c. 50 (Married Women's Property), 250, 263

STATUTES—*continued*.

- 37 & 38 Vict. c. 57 (Limitations), 306, 312, 316, 319, 321  
78 (Vendor and Purchaser), 121, 145, 146
- 38 & 39 Vict. c. 77 (Judicature Act, 1875), s. 10, 40  
87 (Land Transfer), s. 48, 224
- 40 & 41 Vict. c. 18 (Settled Estates), 106, 118, 119, 120, 134,  
268
- 41 & 42 Vict. c. 54 (Debtors), 276

## STATUTE OF FRAUDS,

- declarations of trust to be proved by writing, 25
- personalty not within, *ib.*
- copyhold within, *ib.*
- leaseholds within, 26
- mode of proof of trust under, 25
- trust under, to be completely declared, *ib.*
- c. q. t.* person to declare trust under, *ib.*
- Crown not bound by, 26, 243
- charitable trusts are within, 26
- signature required by, *ib.*
- benefit of, cannot be claimed to support illegal conveyance, *ib.*
- mode of pleading (Ord. xix. r. 23), *ib.*  
not by demurrer, *ib.*
- cannot be pleaded by *particeps criminis* in a fraud, 85
- description of trustees as vendors under, 112

## STATUTE OF LIMITATIONS,

- debts barred by, at death of testator, not renewed by trust to  
pay debts, 39  
where trust to pay debts of another, *ib.*
- time stops at the death, *ib.*
- remedy must be obtained without delay, *ib.*
- time runs where duty of executors to pay, *ib.*
- direction to pay, *ib.*  
prevents lapse, *ib.*
- liable to duty, *ib.*
- receipt for, by partners, 40
- where debt unclaimed, *ib.*
- express trust* not barred by, under s. 25 of 3 & 4 Will. IV.  
c. 27, 306  
until purchase for value, *ib.*
- under Real Property Limitation Act, 1874, *ib.*  
Judicature Act, 1873, *ib.*
- scope of s. 25, *ib.*  
not applicable to constructive trusts, 75,  
307  
applies to person claiming under trustee, *ib.*
- what are, 306

STATUTE OF LIMITATIONS—*continued.*

- of trust legacy assented to by executor, 301
  - secus*, if not set apart, 308
  - lashes of legatee, *ib.*
- trust by devisee to pay his testator's debts and legacies is, *ib.*
- for claimants on pension fund, *ib.*
- for sale, 308
  - election against exercise of, effect of, 308
- covenant to settle is, where, 309
- solicitor receiving and paying for client not, *ib.*
- agent to sell and invest, is, *ib.*
- bankers, relation of, to customers is not, *ib.*
- for annuitants under receivership deed, *ib.*
- debts, annuities, or legacies, charge creates no, 311, 312
  - trust for, will not under new Act, 312
- past creditors, 309
- of lease renewed by tenant for life, *ib.*
- of fee-farm grant to remainderman, *ib.*
- in trustee *de son tort*, *ib.*
  - acting though trust estates did not pass, 310
- in executor managing testator's business, *ib.*
- vendor's lien does not create, 310
- mortgage by trust for sale does not create, *ib.*
  - though in name of trustee for mortgagee, *ib.*
  - surplus sale-money under trust for, is, *ib.*
- power of sale may create, how, *ib.*
- guardian and ward, relation of, is, *ib.*
  - infant's land, entry of, on, when and how to account, 311
- charities, *ib.*
- equitable claims*,
  - by s. 24, are barred as if legal, 312
  - for waste, 313
  - implied trusts barred by lashes, *ib.*
  - rules of Courts of equity as to, 313, 314
  - executor of trustee liable for breach of trust, 314
  - term remaining undisturbed in trustees saves equitable rights, 314
  - possession of *c. q. t.* not adverse to trustee, *ib.*
    - of *cs. q. t. inter se* not adverse, 315
  - trustee barred if *c. q. t.* barred, *ib.*
    - mistake of, as to who are *cs. q. t.*, *ib.*
  - c. q. t.* barred if trustee barred, when, *ib.*
  - acknowledgment, effect of, *ib.*

STATUTE OF LIMITATIONS—*continued.*

- by one trustee, 316
- action saves right, *ib.*
- demurrer, Statute may be set up by, *ib.*
- delay and acquiescence*, 316
  - s. 27 saves rules of equity as to, *ib.*
  - presumption from, *ib.*
    - of release or assent, 317
    - burden of proof, *ib.*
- accounts after death of accounting party discouraged, *ib.*
  - admission of correctness of old, 318
  - where evidence ought to have been preserved : costs, *ib.*
  - continuing and open, time does not run, where, *ib.*
    - after means of resisting claim destroyed, 317
- common mistake, *c. q. t.* not barred by, 318
- ignorance of rights prevents acquiescence, 296, 318
- slight delay does not amount to acquiescence, 318, 319
- representatives of deceased partner when bound by acquiescence, 319
- creditors when bound by, *ib.*
- express trusts may be barred by acquiescence, *ib.*
- reversionary interests when barred by, 319, 320
- contingent interests, 320
- remainder, *ib.*
- poverty no excuse against, *ib.*
- fraud* (s. 26), 320
  - prevents bar till discovery, 320, 321
  - inquiry as to time of discovery of, 321
  - suspicion, case of, distinguished, *ib.*
  - nature of, 322
  - person receiving trust money liable on ground of, *ib.*
    - claim against, not barred, *ib.*
    - borrowing, is also trustee, *ib.*
  - particeps criminis* cannot set up Statute, *ib.*
  - dulness of intellect no excuse for not discovering, *ib.*
    - lunacy is excuse, *ib.*
- mesne profits*, 323
  - account of, from accruer of title, *ib.*
    - from action brought, *ib.*
      - where no notice of plaintiff's title, *ib.*
      - where deeds not in defendant's custody, *ib.*
      - where delay, *ib.*
    - infant, action by, for, *ib.*
    - representatives, against, *ib.*
    - mistake, in case of, *ib.*

## STATUTE OF USES,

- devise of freeholds by analogy to, 1
- application of, to wills, 1
- analogy of, not applied to devise where trust coupled with duty, 2
- copyholds not within, 1
- leaseholds not within, 1

STOCK [*see* INVESTMENT]

- voluntary covenant to transfer, 30
- trustee should not give power of attorney to co-trustee to sell, 17
- restraint on anticipation prevents transfer out of Court of, 263
- interest where, sold out, 285

## STOCK-IN-TRADE,

- voluntary trust of, 29

STOCK MORTGAGE [*see* INVESTMENT]STRICT SETTLEMENT [*see* EXECUTORY TRUSTS]

- prevents trust estates passing by general devise, 21

## SUBSETTLEMENT,

- keeps power of sale alive, 117

## SUCCESSION DUTY,

- charged on land purchased for reinvestment in lieu of estate sold, 121

SUPERSTITIOUS USES [*see* ILLEGAL TRUSTS]SUPPORT [*see* MAINTENANCE]

## SURETY,

- in bond, concurrence of, no excuse for loan on personal security, 137
- married woman joining as, 261

## SURFACE,

- sale of, without mines, by trustees, under 25 & 26 Vict. c. 108, 118
  - petition for, *ib.*
  - under Settled Estates Act, s. 19, *ib.*

## SURRENDER,

- of lease, power to take, passes legal fee, 6
- of life estate not allowed to accelerate power to charge, 116
- voluntary covenant to, copyholds, 30
- to use of will, effect of on purchase in son's name, 66

**SURVIVOR,**

- of trustees, power of, to appoint new trustees, 203, 208, 209
  - of separation deed, 204
- exercise of power of sale by, 122
- power of devisee of, to execute trusts, 24
  - being heir, *ib.*
- of executor of, *ib.*
- where no estate given to trustees, *ib.*
- rights of, on joint purchases, 69—71 [*see* RESULTING TRUSTS]

**SUSPICION**

- of fraud, effect of delay on case founded on, 321

**TAXES,**

- trustees to pay taxes take legal fee, 6

**TAXING MASTER,**

- to apportion costs where trustees sever defence, *ib.*

**TENANTS IN COMMON [*see* TENANTS IN COMMON]**

- general devise to, with accruer or not, prevents trust estates passing under it, 22
  - or to a class as, *ib.*

**TENANT FOR LIFE,**

- entitled to possession, 221
  - unless contrary intention, *ib.*
- powers of, *ib.*
- mismanagement by, *ib.*
- turned out of possession wrongfully by trustees, 222
- let into possession on terms, when, *ib.*
- cutting timber wrongfully, *ib.*
- right to vote for Parliament, *ib.*
  - not for coroner, *ib.*
- rights of, in reversions or contingencies, 95
  - to income of proper investments, *ib.*
    - how estimated, *ib.*
  - to income of investments at very high interest, 96
    - to rents of real estate, *ib.*
  - to income of improper investments, *ib.*
    - inconvertible property, *ib.*
    - accumulations, *ib.*
    - fund to meet contingent legacies, 97
- duty of, to keep down interest on charges, when, 96
- not to be favoured on sale by trustees, 112
- being trustee, may exercise power of sale, 113
- conduct of sale by, *ib.*

TENANT FOR LIFE—*continued.*

- consent of, to sale by trustees, 119
  - after alienation, *ib.*
  - bankruptcy, *ib.*
  - as protector, after barring entail, *ib.*
- though to consent to sale, may buy trust estate, 188
  - duty to disclose knowledge, 189
- rights of, unaffected by delay in sale, 115
  - adjustment of, *ib.*
  - reversion, *ib.*
- may obtain lease to himself, 186
- loan to, 138
- consent of, to transposition of securities, 134
- varying investment for benefit of, 135
  - probability of issue as to, 136
- sale or mortgage by, does not prevent appointment of new trustees, 214
- may be trustee, 211
- of lease, buying fee, to keep down charges on lease, 78
- is constructive trustee of money received for withdrawing opposition to bill, 73
  - for enfranchisement, *ib.*
- right of, to accumulations until investment in land, 147
  - to timber, 107
  - to gravel worked, *ib.*
  - to fines on grants of waste of manor, *ib.*
- with precatory trust over, may cut timber, &c., 55
  - must leave property *in statu quo*, 56
- power of, to charge for rebuilding, 107
- to keep down interest on charge for improvements under 27 & 28 Vict. c. 114, 107
- right of, to income of wasting property, when, 91—97
- sale of reversion for benefit of, 116
- title-deeds, custody of, by, 226, 227 [*see* TITLE DEEDS]
- overpayment to, remedy for, 327
  - of income of wasting property, 231
- wrong payment of timber-money to, 118
- husband who is, does not lose interest by divorce, 235
- liability of, on sale or mortgage for renewing leases, 151
- renewing lease in settlement, 75 [*see* CONSTRUCTIVE TRUSTS]
- not express trustee of renewed lease, 309
- obligation of, to renew leases, 75, 148, 149
- when bound to renew is a trustee, 149
  - receiver where he does not, *ib.* 274
  - personal liability, 150
- lien of, for renewal fines, *ib.*
- following trust-money into land bought therewith by, 304
  - lien on the land, *ib.*



**TENANT FOR LIFE**—*continued*.

- presumption of purchase to uses of settlement, 305
- trustee, interest of as, impounded for breach of trust, if equitable, 219
  - secus* if legal, *ib.*
- legal fee simple not taken after death of, unless required, 2, 5
  - under Wills Act [*see* **LEGAL ESTATE**]

**TENANT FROM YEAR TO YEAR**,

- renewal by executor, where testator was, 74

**TENANT IN TAIL** [*see* **ESTATE TAIL**]**TENANT AT WILL**,

- renewal by executor, where testator was, 74

**TENANCY IN COMMON**,

- by unequal payment of purchase-money, 69
- by equal payment, where, 70
- on purchases for trade purposes by partners, *ib.*
- where joint tenancy construed as, in executory trusts, 46, 49
- of portion fund prevents merger, when, 169
  - [*see* **SECRET TRUSTS**]

**TERM**,

- vesting legal estate in, in trustees, 1
  - where whole term not required, 2
- equitable, effect of giving, upon legal estate in trustees, 9
- limitations of, tending to perpetuity, void, 152
  - unless in trust to attend, *ib.*
  - charge to be raised by excessive, *ib.*
- legal estate in, effect of getting in, 297
- for raising money to pay debts, 155
- to secure portions [*see* **PORTIONS**]
- effect of, in trustees to save equitable rights, 314
- lessor's title not shown on purchase of, 144

**TESTATOR**,

- creation of secret trust by [*see* **SECRET TRUSTS**]

**THEFT** [*see* **FRAUD**]**THELLUSSON ACT** [*see* **ACCUMULATION**]**THINNINGS** [*see* **TIMBER**]**TIMBER**

- cutting, power of, by trustees, 107
  - for repairs, *ib.*
  - decaying, *ib.*

TIMBER—*continued.*

- for thinning plantations, *ib.*
- selling, to pay for other timber for repairs, *ib.*
- proceeds of, right to, *ib.*
- accumulations of produce of, not limited by Thellusson Act, 153
- tenant for life with precatory trust over may cut, 55
- wrongful fall of, by life-tenant in possession, 222
- title deeds, retainer of, by *c. q. t.* after wrongful fall of, 226
- raising money to pay debts out of, 155
- sale of, to raise portions, 165
- land not to be sold by trustees without, 118
- sale of, without, to pay debts, *ib.*
- proceeds of, wrongly paid to tenant for life, *ib.*
- estate, investment in, 147

## TIME

- of sale by trustees [*see* SALES BY TRUSTEES]
- for coming in under trust for creditors, 37, 38
  - where there is a covenant not to sue, *ib.*
- bar by [*see* STATUTE OF LIMITATIONS]

## TITLE

- on purchase of land by trustees, 144
  - by Court, *ib.*
- under Vendor and Purchaser Act [*see* INVESTMENT]
- trustees to give good marketable, 120
- of *c. q. t.* to payment [*see* CESTUI QUE TRUST]

## TITLE-DEEDS,

- custody of, by *c. q. t.* for life, 226
  - taking them out of jurisdiction, *ib.*
  - allowed on terms, where, *ib.*
- by trustees, *ib.*
- where action pending, *ib.*
- abuse of, by mortgage in fee, *ib.*
- remainderman, action by, for, 227
- production of cases and opinions, *ib.*
- safety of, 100
- loss of, effect of, on right of *c. q. t.* to conveyance of legal estate, 223
- leaving, in hands of co-trustees, 240
- not ordered to be delivered up by purchaser without notice, 295
  - where deeds are with equitable mortgagee, *ib.*
- account of mesne profits against a defendant who has not, 323
- voluntary trust of, 30

## TORTS,

separate estate not liable for, 265

## TRACING

trust-money [*see* FOLLOWING TRUST ESTATE]

## TRADE,

risking money in, 137

allowing money to remain in, 239

carrying on, by trustees, for winding up, 89

by executors, liability on, 90

indemnity against, *ib.*

property, mortgage of [*see* INVESTMENT]

interest on profits made in, by trustee [*see* INTEREST]

advancement to establish wife in, 179

separate, of married woman, 250

## TRANSFER,

voluntary covenant to, stock or shares, 30

mode of making voluntary trust by legal, 28

incomplete, by indorsement on share certificates, 29

assignment by deed, *ib.*

not construed as declaration of trust, 27, 29

of shares to trustee makes him liable for calls, 140

trustees should get, of trust funds, 87

of trust property to new trustee, execution of, 207

of fund in Court to husband by wife's consent, 32

injunction to restrain, of trust-money, 301

## TRESPASS

on separate estate, action by husband for, 265

## TROUBLE,

allowance for [*see* ALLOWANCES]

## TRUST,

acceptance of [*see* ACCEPTANCE]

to accumulate [*see* ACCUMULATION]

for advancement [*see* ADVANCEMENT]

breach of [*see* BREACH OF TRUST]

charitable [*see* CHARITY]

constructive [*see* CONSTRUCTIVE TRUSTS, 72—78]

for creditors [*see* CREDITORS]

Crown, rights of with reference to, 242—244

[*see* CROWN]

to pay debts, gives power to give receipts, where,

[*see* RECEIPT]

to pay debts authorises sale or mortgage, 101

delegation of [*see* DELEGATION]

**TRUST—continued.**

- discretionary, cannot be delegated by grant or devise, 20
  - even to co-trustee, *ib.*
- executory [*see* EXECUTORY TRUSTS]
- express [*see* STATUTE OF LIMITATIONS]
- failure of, Court prevents, 103
- of foreign property [*see* FOREIGN PROPERTY]
- illegal [*see* ILLEGAL TRUSTS]
- immoral [*see* ILLEGAL TRUSTS]
- for illegitimate children [*see* ILLEGAL TRUSTS]
- implied, for maintenance, 175
- implied, to renew leases, 149
- for investment [*see* INVESTMENT]
- legal estate required to support [*see* LEGAL ESTATE]
- for maintenance [*see* MAINTENANCE]
- to raise money by mortgage does not authorise sale, 124
- notice of, to companies [*see* NOTICE]
- power in nature of, execution of, by Court, 103
  - mode of execution, *ib.*
- precatory [*see* PRECATORY TRUSTS]
- to secure portions [*see* PORTIONS]
- to preserve contingent remainders [*see* CONTINGENT REMAIN-  
DERS]
- for renewal [*see* RENEWAL OF LEASE]
- resulting [*see* RESULTING TRUSTS]
- sale, for [*see* SALES BY TRUSTEES; TRUST FOR SALE]
- secret [*see* SECRET TRUSTS]
- separate use, for [*see* SEPARATE ESTATE]
- effect of Statute of Frauds as to, 25, 26
  - [*see* STATUTE OF FRAUDS]
- void as perpetuities [*see* PERPETUITIES, RULE AGAINST]
- voluntary [*see* VOLUNTARY TRUSTS]

**TRUSTEE DE FACTO,**

- trustee imperfectly appointed who accepts is, 14

**TRUSTEE DE SON TORT,**

- trustee imperfectly appointed, who assents is, *ib.*
- devisee of trust estates which do not pass acting is, *ib.*

**TRUST FOR SALE [*see* SALES BY TRUSTEES]**

- trustees under, take fee simple, 5
- prevents trust estates passing by general devise, 21
- land contracted to be sold passes under devise in, 22
- authorises clearing title from doubtful claim, 101
- to pay off mortgage, allows sale subject to mortgage, 124
- does not authorise partition, 123
- building house on land subject to, 106

## TRUSTEE,

- acceptance of trust by [*see* ACCEPTANCE], 12
- acceptance by original, of voluntary trusts of equitable estate, 28
- accounts, duty of, to keep and be ready with [*see* ACCOUNTS]
- allowances to [*see* ALLOWANCES]
- annuity to, for trouble, 200
- may apply to Court if unexpected questions arise, 205
  - at cost of estate, when, *ib.*
  - if doubtful whether trusts have ceased, 206
  - where *c. q. t.* refuses to let him retire, *ib.*
- cannot apply to Parliament without leave of Court, 103
- attachment of [*see* ATTACHMENT]
- banker, who is [*see* BANKER]
- bankruptcy of [*see* BANKRUPTCY ; RECEIVER]
- having beneficial interest is within Trustee Acts, 210
- bare, definition of, 224
- calls on shares, liability of, for, 140
- c. q. t.* out of possession, may not keep, 221
  - [*see* TENANT FOR LIFE]
- of charity, order for payment to all or any, 16
  - majority of, can bind minority, 15
- contingent remainders, to preserve [*see* CONTINGENT REMAINDERS]
- contract by, with *c. q. t.* for remuneration, 201
  - valid if without pressure, *ib.*
  - separate advice as to, *ib.*
  - with co-trustee, *ib.*
- conveyance by, of legal estate [*see* CONVEYANCE]
- co-trustee, liability of, for acts of [*see* CO-TRUSTEE]
- for creditors [*see* CREDITORS]
- of creditor's deed, has no right of retainer though executor, 38
- criminal liability of, 281, 282
- de son tort*, or *de facto*, 241
  - person acting though legal estate did not pass is, *ib.*
  - settlor of sum falsely reciting payment is, *ib.*
  - liability of, *ib.*
  - ignorance by, of title, *ib.*
  - agent, where, *ib.*
  - an express trustee, when, 309
- devise by, of trust estates [*see* DEVISE OF TRUST ESTATES]
- disclaimer of [*see* DISCLAIMER]
- discretion, consulting *c. q. t.* as to exercise of, 102
  - [*see* DISCRETION]
- dividends, one, can receive, 15, 16
- felon, appointment of new trustee where, 209
- to get in trust estate, duty of, 87
  - [*see* GETTING IN TRUST ESTATE]

TRUSTEE—*continued*.

- husband is, for wife's fortune, covenanted to be transferred by him, 87
- indemnity to [*see* INDEMNITY]
- infant heir of deceased vendor, 225
- injunction against [*see* INJUNCTION]
- interest for breach of trust chargeable against [*see* INTEREST]
- must act jointly [*see* BANKRUPTCY ; CHARITY ; COURT]
  - in giving receipts for trust funds, 15
  - in proving debts, *ib.*
    - except in special cases, 16
- must all join in advances of trust money, 15
  - receipt of sale moneys, *ib.*
- lease, must not take to himself, 185
  - to relative, *ib.*
- legacy to [*see* LEGACY]
- vesting legal estate in [*see* LEGAL ESTATE], 5—7
- take fee under what devises [*see* LEGAL ESTATE]
- may be compelled to enforce legal right, 277
  - though action deferred at instance of *c. q. t.*, *ib.*
  - refusal to enforce voluntary covenant, 279
  - c. q. t.* barred by trustee's delay, *ib.*
  - using trustee's name to sue, *ib.*
  - pleading, form of, *ib.*
- money advanced out of pocket by, remedy of, for, 102
- ne exeat* against [*see* NE EXEAT]
- new [*see* NEW TRUSTEES]
- notice to [*see* NOTICE]
- notice to, of voluntary trust of equitable estate, 28
- notice, neglect of, to give to office of voluntary assignment of policy, 30
- obtaining opinion of Court by petition of, 108—110
  - discharge of, by, 108 [*see* ADVICE PETITIONS]
- under parol declaration of trust, 33 [*see* VOLUNTARY TRUSTS]
- payment into Court by, by order [*see* PAYMENT INTO COURT]
- payment by, to *c. q. t.* [*see* CESTUI QUE TRUST]
  - to co-trustee [*see* CO-TRUSTEE]
  - on doubtful appointment, 102
- permanent improvements by, 106
- personally, must act [*see* DELEGATION]
- profit of [*see* ALLOWANCES]
- powers of [*see* POWERS]
  - to grant waste of manor, 107
  - fencing, 108
  - to consent to marriage [*see* CONSENT]
  - to take surrender of leases passes legal fee, 6
- receiver with salary may be, when, 202
- release, right of, to [*see* RELEASE]

TRUSTEE—*continued.*

- removal of [*see* REMOVAL]
- renewal by, in their own name [*see* CONSTRUCTIVE TRUSTS]
- remuneration, refusal of, to act without, 200
  - petition of, for, *ib.* [*see* ALLOWANCES]
- retiring [*see* NEW TRUSTEES]
- robbery or fraud, liability of, for, 98
- sales by [*see* SALES BY TRUSTEES]
- secret [*see* SECRET TRUSTS]
- should not sever defence, 16 [*see* DEFENCE]
- separate use, for [*see* SEPARATE ESTATE]
- of separation deed, appointment of new, 204
- solicitor who is [*see* SOLICITOR]
- solicitor liable for misapplication by, 19
  - though solicitor a trustee, *ib.*
  - to be joined in action against, *ib.*
- tenant for life bound to renew is a, 149
- timber, cutting, [*see* TIMBER]
- title-deeds, custody of, by, 226 [*see* TITLE-DEEDS]
- of West Indian Estate [*see* ALLOWANCES]

*when share in corpus may be impounded 335.*

TRUST ESTATE [*see* DEVISE OF TRUST ESTATE]

- getting in [*see* GETTING IN TRUST ESTATE]
- dower out of, 269
- curtesy out of, 270
- freebench, none out of, *ib.*
- purchase of, for value, without notice [*see* FOLLOWING TRUST ESTATE]

TURNPIKE BONDS [*see* INVESTMENT]

## UNCERTAINTY,

- resulting trust from, 59
- as to property affected by secret trust, 80
  - inquiry where, 81
- of direction to settle, 50, 51

## UNDERVALUE,

- sale by trustees at, 112

## UNDIVIDED SHARES

- should be sold together, 117
  - apportionment of price, *ib.*

## USE,

- legal estate follows on devise of freehold, 1

## USES,

Statute of [*see* STATUTE OF USES]

VALUABLE CONSIDERATION [*see* CONSIDERATION]

## VALUATION,

to be made before sale by trustees, 111

costs of, *ib.*

before mortgage, to be obtained by trustees, 141

to be independent, *ib.*

of speculative property, *ib.*

of trade property, *ib.*

new, on re-advancing on same property, 142

of security of secured creditor, 40

VALUE [*see* CONSIDERATION]

proof of, by agent buying, 187

purchaser for [*see* FOLLOWING TRUST ESTATE]

## VARYING SECURITIES

power of, is "usual power" in settlement, 50

VENDOR [*see* SALES BY TRUSTEES]

dying before conveyance not "bare trustee," 224

where he leaves infant heir, 225

is constructive trustee after contract for sale, 21, 72

devise of trust estates by, passes estate contracted to be sold, *ib.*

liability of, for rents, waste, &c., after sale, 73

lien of, defence of purchase without notice good against, 296

abandonment of, *ib.*

is not an express trust, 310

VENDOR AND PURCHASER ACT, 1874 [*see* INVESTMENT; SALES BY TRUSTEES]

## VESTING,

legal estate in trustee [*see* LEGAL ESTATE]

trust estate in new trustees, 203

of accumulations, 152

restrictions beyond 21 after, void, 84

*e. g.*, direction to settle on marriage, *ib.*

of portions [*see* PORTIONS]

## VOLUNTARY ASSIGNMENT

of trust property, liability of assignee, under, 295



VOLUNTARY TRUSTEES [*see* VOLUNTARY TRUSTS]

liability of, for loss, 240

creation of, must be irrevocable, *ib.*

## VOLUNTARY TRUSTS,

mode of creating, 27

imperfectly created not construed as declaration of trust, *ib.*

by legal transfer, mode of creating, 28

of equitable estate, *ib.*of equitable reversion, *ib.*of agreement for a lease, *ib.*

of annuity, 32

notice of, volunteer's title good, without, 28

communication of, to volunteer, *ib.*acceptance of, by volunteer, *ib.*

imperfect voluntary trusts : 29, 30

indorsement on share certificates without transfer, 29

on bond, *ib.*on lease, *ib.*informal assignment of shares by deed, *ib.*

by power of attorney, 29, 32, 34

by cheque, 29

retainer by drawer, *ib.*

of title-deeds in box, 30

retainer of key, *ib.*by deed poll, *ib.*of mortgagee's interest, *ib.*promise to assign, *ib.*voluntary covenant to transfer stock or shares, *ib.*surrender copyholds, *ib.*where settlor has done all he can, *ib.*of policy, *ib.*duty of trustee to give notice to insurance office, *ib.*

volunteers can compel completion of imperfect, by settlor, 31

by representatives, *ib.*settlement on, contrary to intention, cancelled, *ib.*reformed, *ib.*by letter without legal transfer, *ib.*operating as appointment under power, *ib.*

signature of, 32

for wife, *ib.*proof of separate use, *ib.*of promissory note, *ib.*effect of consent in Court by wife to transfer to husband, *ib.*by *feme sole*, *ib.*meritorious consideration, *ib.*

under Acts of Elizabeth, 36

*ex post facto* consideration, *ib.*

VOLUNTARY TRUSTS—*continued.*

- for remainderman good against subsequent settlement on second marriage, 32
- in family arrangements, 33
- mixing property subject to, *ib.*
- parol, of personalty, *ib.*
  - evidence of intention to become trustee, *ib.*
    - by conversations, *ib.*
  - form of, *ib.*
- settlor retaining control of property subject to, 33—35
  - communication of, to *c. q. t.*, 34
  - retaining deed, *ib.*
- informal will not be construed as declaration of trust, *ib.*
- memorandum “to leave,” &c., not construed as, *ib.*
- death of settlor before completion of settlement on, *ib.*
- collateral security to perform, *ib.*
- production of settlement by executors, 35
- revocation by destroying seals, *ib.*
  - by getting in legal estate, *ib.*
- satisfaction of, by will, *ib.*
- fraudulent, as against creditors under 13 Eliz. c. 5, 35
  - purchasers under 27 Eliz. c. 4, *ib.*
  - extent of valuable consideration, *ib.*
- pleading illegality against, 85
- remedy of *c. q. t.* under, 36
- heir or devisee cannot avoid, by sale, *ib.*
- settlor on, cannot enforce his contract for sale, *ib.*
- settlement on, not made in pursuance of articles is void against purchaser for value, 45

VOLUNTEER [*see* VOLUNTARY TRUSTS]

## VOTE,

- right of *c. q. t.* to, for Parliament, 222
  - not for Coroner, *ib.*
- purchase in son's name to secure, 63

## VOUCHERS,

- allowed by trustees to be taken abroad by agent, 18

## VOUCHING

- accounts of trustees, directions as to, 229

## WAGES,

- separate, under Married Women's Property Act, 250



WILLS ACT [*see* STATUTES]

secret trust enforced notwithstanding, 79

WRIT

of *ne exeat regno* [*see* NE EXEAT]

appointment of receiver before service of, 272

WRONG PAYMENT [*see* PAYMENT]

THE END.







